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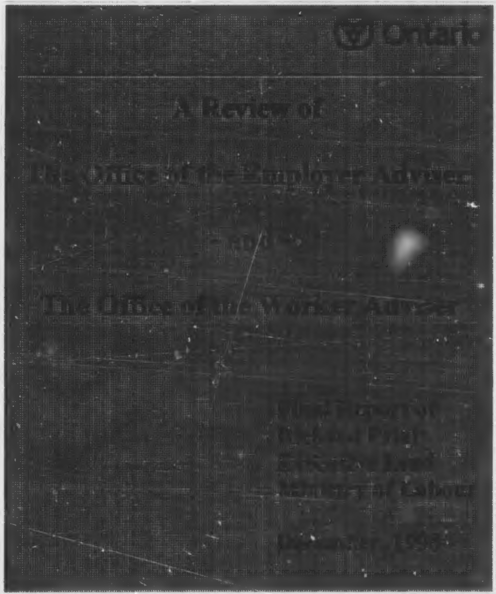

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Ontario

Ministry of Labour **Ministère du Travail**

Dear Deputy:

We are pleased to present this Report, a review of the functions and operations of the Office of the Worker Adviser and the Office of the Employer Adviser, two agencies of the Ministry of Labour that play an important role in Ontario's workplace safety and insurance system. This review was conducted pursuant to the provisions of the *Workplace Safety and Insurance Act*.

This is a detailed report. Its purpose is to assist the Ministry in determining, as section 176 of the *Act* requires, whether or not the Office of the Worker Adviser or the Office of the Employer Adviser should continue to exist. It has been written as well with a view to providing a constructive basis for improvements that will enhance the capacity of these two Offices to serve the workers and employers of Ontario more efficiently and more effectively.

This report would not have been possible without the generous participation of many concerned individuals. In the course of conducting this review, we met with many injured workers and employers and with organizations that speak for their interests. We have observed that many care deeply about the fate of these two Offices.

We would like to express our appreciation for the assistance we received from management and staff of the other institutions in the workplace safety and insurance system--the Ministry, the Board, the Workplace Safety and Insurance Appeals Tribunal and the Safe Workplace Associations. We would also like to acknowledge the generosity of the managers of worker and employer advisory services across Canada, all of whom readily and openly shared the benefit of their experience with us. We hope that this report is of some value to them.

We must also acknowledge our special debt to the staff and management of the OWA and the OEA, without whose cooperation, openness and insight this review would not have been possible. We would like to express our pleasure at meeting so many dedicated individuals who are passionately committed to the interests of their worker and employer clients. Finally, we commend to you the conduct of the Directors of the OWA and the OEA during the course of what must have been a difficult process. Notwithstanding the pressures they face daily, they were unstinting in the time and resources they dedicated to facilitating this review.

Respectfully submitted,

Richard Prial	Robert Arnot
Executive Lead	Senior Advisor

Executive Summary

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Functional Review Findings
Operational Review Findings--Office of the Employer Adviser
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This report presents a review of the functions and operations of the Office of the Worker Adviser and the Office of the Employer Adviser, two agencies established by the *Workplace Safety and Insurance Act* to provide education, advice and representation services to, respectively, non-unionized workers and primarily employers with fewer than 100 employees. The purpose of this report is to enable the Ministry of Labour to determine, in accordance with the requirements of section 176 of the *Act*, whether or not the Offices should continue to exist, and to propose improvements that will enhance the capacity of the Offices to give full effect to their statutory mandates.

The report is divided into four parts. Part I provides an overview of the Offices, outlines the methodology of the review and surveys the practice in other Canadian jurisdictions.

Part II sets out five functional review findings that address the question of whether or not the Offices are doing the right things. It is concluded that the case for the continued provision of advisory and representation services to workers is compelling, and that there is a case, if a less compelling one, for the continued provision of advisory and representation services to employers. The functional review finds that the Offices have met with varying degrees of success in giving effect to their new statutory mandates and that they should focus on providing representation and advice to their target markets as re-defined by the legislation, non-unionized workers in the case of the OWA and small employers in the case of the OEA. The functional review also finds that greater coordination is necessary among the Offices, the Ministry of Labour and the Workplace Safety and Insurance Board if the Offices are to maximize their effectiveness in the workplace safety and insurance system.

Part III sets out nine operational review findings that address the question of whether or not the Offices are doing things right, based on a review of service delivery, planning, quality management and performance management. The review finds that both organizations, while they have striven to implement their new mandates, face challenges in effectively targeting service delivery at the appropriate clients, and should increase service levels. It is also noted that, in order to achieve these service delivery objectives, both organizations should build upon their current planning capacity and put in place a formal, participative planning process. The commitment of both Offices to service quality is noted, and further targets are proposed. Both organizations have been fairly aggressive in implementing performance measures, and these would benefit from the development of additional standards. Part III concludes with a review of the OWA's management of the program through which monies are transferred to the OFL, the Building Trades and numerous injured worker groups for training and allied purposes.

Part IV sets out six recommendations. The findings and recommendations in summary fashion appear below.

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Functional Review Findings

Finding No. 1 Role of worker advisory services in Ontario's workplace safety and insurance system

There is a legitimate role for a service that provides advice and representation to injured workers in the current workplace safety and insurance system. The case is based on: the demonstrated need to provide vulnerable injured workers with no cost, expert advice and representation in dealing with a complex system; the benefits to the system and the community of providing such workers access to assistance; and the benefits to the system of expert, disinterested advocacy.

Finding No. 2 Functions of the OWA

The OWA has striven to give effect to its new statutory mandate by focusing its resources on the provision of representation services to workers who are not members of a union. This finding is qualified by the further finding that, to fully realize its role in the system and fulfill its mandate, the OWA must adopt a range of measures to enable it to serve more fully and effectively greater numbers of the vulnerable workers in Ontario, and must take a greater role in enabling the expeditious disposition of claims in the workplace safety and insurance system.

Finding No. 3 Role of employer advisory services in Ontario's workplace safety and insurance system

There is a legitimate role for a service that provides advice and representation to employers in the current workplace safety and insurance system, although the case is not as compelling as it is for the parallel service for workers. The case is based on the need to assist small employers in managing better the risks and consequences of workplace illness and injury, on the benefits to the system of expert, disinterested advocacy and on the desirability, from the perspective of employers, of maintaining an advocate that speaks for the interests of employers generally and thereby helps provide balance to a system that funds a workers' advocate.

Finding No. 4 Functions of the OEA

The OEA has striven to give effect to its new statutory mandate by focusing more of its resources on smaller employers and on activities other than representation and advice, including education and consulting. The transition has been difficult and, although small employers should be the predominant focus of its activity, large employers continue to form a significant proportion of the OEA client base. Consequently, while employers who have been assisted by the OEA place a high value on its services, the OEA faces a significant challenge in maximizing its effectiveness within the system.

Finding No. 5 Relationship of the OWA and the OEA to the other institutions comprising the workplace health and safety system

The ability of the OEA and the OWA to fully realize their roles and optimize their value to clients and to the system is, in varying degrees, constrained by the limitations on their ability to coordinate their planning and activities with the strategic objectives and activities of the other institutions in the workplace health and safety system.

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Operational Review Findings--Office of the Employer Adviser

Finding No. 6 Service Delivery

The OEA provides a valued service but has been challenged to re-establish its market and build demand. While the Office has made concerted efforts to raise awareness of OEA services within the small business community and to provide a broader range of services, it must raise service levels and further reduce its administrative costs to ensure value for money.

Finding No. 7 Planning

The system of planning used by the OEA conforms to current requirements. More effective targeting of internal resources and better balancing of work volumes can be achieved by adopting more formal and participative planning processes and by undertaking more regular reviews of organizational performance.

Finding No. 8 **Quality Management**

The OEA demonstrates a strong desire and commitment to deliver quality services and has taken many positive steps to improve service quality. Consistency in internal practices, service delivery and service quality are important elements of a quality management system that OEA should work towards.

Finding No. 9 **Performance Management**

The OEA is in the process of implementing a performance management program. Performance standards for managers and staff generally support corporate performance measures but would be improved with the delineation of quality standards to govern core business activities and more even distribution of work across the organization.

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Operational Review Findings--Office of the Worker Adviser

Finding No. 10 **Service Delivery**

The OWA provides a critical service to many injured workers. The OWA has the internal capacity to serve a greater number of vulnerable workers and to enhance system adjudicative processes, and to this end should review a number of its key practices and resource allocation decisions.

Finding No. 11 **Planning**

The adoption of more formal and participative planning processes will enable the OWA to serve more effectively the most vulnerable injured workers and the needs of the system, build staff support and give full effect to its statutory mandate.

Finding No. 12 **Quality Management**

The OWA demonstrates a strong desire and commitment to deliver quality services and has taken many positive steps to improve service quality. The adoption of measures to improve consistency in internal practices and service provision are part of a service quality management system that OWA recognizes and is working toward.

Finding No. 13 **Performance Management**

The OWA has developed a series of organizational performance measures as part of its business planning process and has effectively devolved these measures to staff through individual performance contracts. The efforts made by the OWA to improve its performance management system should be augmented by standards related to service quality and supported by semi-annual reviews of corporate and individual performance as part of business planning and quality management commitments.

Finding No. 14 **Transfer Payments Administration**

The OWA has recently instituted changes to its administration of the transfer payment programs to improve accountability for the monies distributed. The effectiveness of the OWA's administration of the programs could be further enhanced by undertaking regular reviews of the effectiveness and efficiency of these transfers and by testing the value of the transfers against external standards.

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Recommendations

1. **The OEA and the OWA should be continued, subject to a review by January 1, 2002 in light of the needs of Ontario's workplace safety and insurance system at that point in time.** *(Recommendation 1)*
2. **The OWA should concentrate its resources on providing expert advisory and representation services to the most vulnerable injured workers and on enhancing the expeditious disposition of claims within the system.** *(Recommendation 2)*
3. **The OEA should concentrate its resources on providing expert advisory and representation services to small business and on enhancing the expeditious disposition of claims within the system.** *(Recommendation 3)*
4. **The OEA and the OWA should address the findings and implement the recommendations set out in this Report within 12 months.**

   The Directors should work with the Ministry of Labour to examine alternative delivery structures that will minimize the cost of administration and maximize the investment in front-line service. *(Recommendation 4)*
5. **The OEA and the OWA should be continued as agencies of the Ministry of Labour operating at arms' length from the Ministry and independently of the Workplace Safety and Insurance Board.**

   Mechanisms should be developed to enhance coordination among the Offices, the Board and the Ministry and to enhance the ability of the Offices to plan and act in light of the strategic objectives of the workplace safety and insurance system. *(Recommendation 5)*
6. **The Ministry of Labour should, within 12 months of the date of this Report, review the effectiveness and value of the programs through which the Ministry transfers funds to the Ontario Federation of Labour, to the Provincial Building and Construction Trades Council of Ontario and to injured worker groups.** *(Recommendation 6)*

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I. Introduction

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An Overview
Objectives and Methodology of the Review

Overview: The Office of the Employer Adviser and the Office of the Worker Adviser

The Office of the Employer Adviser ("OEA") and the Office of the Worker Adviser ("OWA") are agencies of the Ministry of Labour responsible for providing advice, representation and education to employers and workers, respectively, in matters arising under the *Workplace Safety and Insurance Act, 1997* (the "*Act*"). They are essentially advocacy service delivery organizations.

The Offices were established in legislation (Bill 101) amending the *Workers' Compensation Act* in 1985 as part of a constellation of agencies around the Workers' Compensation Board (the "WCB") that also included the Workers' Compensation Appeals Tribunal and the Industrial Disease Standards Panel. All of these agencies were established principally on the basis of the recommendations of Professor Paul Weiler in his 1980 report to the Minister of Labour, *Reshaping Workers' Compensation*.

The WCB had been providing advisory and representation services to workers for a considerable period of time prior to this report. Professor Weiler's recommendation was to expand and make the Worker Adviser more accessible, and to house it within the Ministry of Labour, which would select, pay and supervise the staff. The principal reason for housing this office within the Ministry was to maintain both the appearance and the reality of the independence of worker advocates from the Board. Noting that employers also have a legitimate interest in workers' compensation, Professor Weiler recommended that the Ministry of Labour establish an Employer Adviser to assist, in particular, small employers in negotiating the complexities of workers' compensation.

The Offices operated as branches of the Ministry of Labour for six years under a broad statutory mandate that did not specify their roles. The focus of their activity through this period was on the provision of advice and representation. In 1991 the Offices became arms' length agencies of the Ministry of Labour. While it did not appear to have an immediate impact on how they operated, this change in their institutional status has had far reaching implications. In particular, as agencies of the Crown, the Offices are subject to Ministry oversight for operational purposes, but are independent for purposes of interpreting and giving effect to their mandates, subject to a memorandum of understanding between their Directors and the Minister of Labour.

The period beginning in mid-1995 to the present has been an unsettling one for both Offices. Like the other institutions in the workers' compensation system, the Offices were placed under the microscope of the review process led by Minister Cam Jackson. Minister Jackson's report, *New Directions in Workers' Compensation* (July, 1996), recommended that the OEA be eliminated and that the mandate of the OWA be limited to providing advice and representation to non-unionized employees. In November, 1996 the government introduced legislation to amend the *Workers' Compensation Act* (Bill 99) which, among many other changes, continued both Offices but with more clearly defined mandates.

Section 176(1) continues the OWA and specifies that "its functions are to educate, advise and represent workers who are not members of a trade union and their survivors." Section 176(2) continues the OEA and provides that "its functions are to educate, advise and represent primarily those employers that have fewer than 100 employees". Bill 99 also provides that the continued existence of the Offices is subject to a further review to be completed by the end of 1998.

These provisions have had the effect of requiring the agencies to re-focus at least some of their activities and to come to terms with their newly defined client groups while under a cloud of uncertainty as to their future. As Bill 99 proceeded through the legislative process, further changes occurred. The advisory councils that each Office had established to provide stakeholder input and guidance were disbanded, and the OEA was restructured in response to the legislative changes, a commitment to improve service provision and add value for the clients and to meet funding constraints.

Today, the OWA serves primarily non-unionized workers in 15 regional offices across Ontario. The greater portion of its approximately $8.57 million budget is allocated to the salaries and wages of its staff complement of 107. Of this number, 66 staff are dedicated to providing front line services; there are 51 worker adviser positions and 15 positions are dedicated to intake. The OWA is also responsible for administering funds transferred to two labour organizations and a host of injured worker groups for training and allied purposes.

With a budget of approximately $2.875 million and a staff complement of 32, the OEA serves primarily smaller (under 100 employees) employers through a regional service delivery network across Ontario. Its 16 employer specialists located around the province provide advice and representation as well as deliver a significant number of education seminars and workshops. The four intake advisers are all located in Toronto and function as a call centre. Education constitutes a far larger portion of the OEA's service delivery activity than it does for the OWA, which is focused primarily on providing advice and representation.

The OWA and the OEA are the largest workers' compensation advisory services in Canada. The need for some form of such services is recognized in most jurisdictions across Canada. All Canadian jurisdictions, with the exception of Quebec and Prince Edward Island, provide advisory and representation services to workers and their survivors, and many have provided the service for more than 20 years. The activity of all worker advisory offices is fundamentally the demand-driven provision of advisory and representation services, and the work load tends to be uniformly heavy. Three jurisdictions--British Columbia, New Brunswick and Newfoundland--provide advisory and representation services to employers. The most comparable jurisdiction is British Columbia, a province with 150,000 registered employers and both an OEA and an OWA.

In six jurisdictions, the service resides within a government ministry or department (usually Labour), employs civil servants, is funded by the ministry or department out of consolidated revenues, and the monies so allocated are recovered from the relevant workers' compensation authority. Ontario is the only jurisdiction in which the Offices are agencies of the Crown. A more detailed jurisdictional survey is set out at Appendix C to this report.

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Objectives and Methodology of the Review

This Review was undertaken under authority of Section 176(4) of the *Act* which provides that: "Before January 1, 1999, the Ministry of Labour shall review the functions and operations of each office and shall determine whether there is a continuing need for the office."

The primary purpose of the review, then, was to enable the Ministry to make the determination required by the *Act* on the basis of an assessment of the functions and operations of the Offices. In light of the recommendation that the Offices be continued, an equally important objective of this report was to identify the challenges these organizations face and to make recommendations to enhance their effectiveness in delivering services to their clients and in supporting the strategic goals of the workplace safety and insurance system.

In reviewing the functions of each office, this Report focuses on the roles and responsibilities of the Offices in Ontario's integrated workplace safety and insurance system, and on their relationship to the institutions within the system. The functional review asks the question whether the OEA and the OWA are doing the right things, and assesses the services provided by each office in light of the needs of workers and employers, the mandate set out in the legislation and the requirements of the workplace safety and insurance system.

The operational review asks the question whether the OEA and the OWA are doing things right, and provides an assessment of whether or not the services being provided by each Office represent value for money, based on measures of economy, efficiency and effectiveness. This analysis also entails an evaluation of the suitability and effectiveness of the management systems in place to set and control the direction of the organizations.

The review was carried out over the period September 1 to November 30, 1998, during which time the reviewers interviewed the staff and management of both Offices in Toronto, Mississauga, Thunder Bay, Ottawa and London. The reviewers, using two sets of similar questions, conducted detailed explorations of the systems used by each Office for planning, allocating resources and managing performance, quality and human resources.

The Review also involved extensive public consultations. Face to face consultations were held in Toronto with 32 organizations that expressed an interest in making oral submissions, and more than 120 written submissions were tabled. In addition, the review team met with many employers and workers who were or are clients of the offices in Toronto, Thunder Bay, Ottawa and London, as well as with worker organizations, community organizations and legal clinics. The reviewers also had the benefit of meetings with the constituency staff of 16 M.P.Ps. The public consultations were based on the terms of reference for the review and a series of six questions designed to elicit views and structure the discussion. The latter are set out in Appendix A, and a list of consultation participants is provided in Appendix B.

Since one of the critical issues before the reviewers was to assess the role of the Offices in Ontario's workplace safety and insurance system, it was necessary to consult the other institutions in the system. The team met with senior management and adjudicators of the Workplace Safety and Insurance Board (the "Board"), and with the Chair of the Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") as well as with Tribunal counsel and adjudicators. Other important institutional stakeholders consulted were Ministry of Labour staff and the executive directors of the Safe Workplace Associations.

Finally, to provide a broader context for this review, the reviewers consulted the managers of worker and employer adviser offices across Canada. This part of the process involved detailed discussions with the managers of nine such offices in other provinces based on a uniform set of inquiries.

The structure of this report reflects the approach adopted by the reviewers. The report is divided into four parts, including this introductory section. Part II sets out five functional review findings. The first four (1, 2, 3, 4) focus on the role of advisory and representation services and the functions of the Offices. The fifth finding addresses roles and responsibilities at the system level. Part III sets out the findings of the operational review in some detail, focusing on service delivery, planning, quality management and performance management within each of the organizations. The report concludes with six recommendations in Part IV.

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II. Functional Review Findings

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Finding No. 1 Role of worker advisory services in Ontario's workplace safety and insurance system

There is a legitimate role for a service that provides advice and representation to injured workers in the current workplace safety and insurance system. The case is based on: the demonstrated need to provide vulnerable injured workers with no cost, expert advice and representation in dealing with a complex system; the benefits to the system and the community of providing such workers with access to assistance; and the benefits to the system of expert, disinterested advocacy.

Virtually all jurisdictions in Canada currently provide workers with assistance in dealing with workers' compensation authorities. Ontario is no exception. For more than a decade rior to the creation of the OWA in 1985, the Board offered workers access to a Worker Adviser office within the Board that functioned independently in resolving worker concerns and appealing adverse decisions. As noted earlier in this Report, the establishment of the OWA in 1985 represented merely an expansion of an existing service into a service independent of the Board.

One can infer from the almost universal provision of worker advisory services in Canada that such services fulfill a range of important functions. The consultations undertaken in the course of this review provide insight into the roles played by advisory services. Workers and their representatives, both trade unions and injured worker groups, vigorously asserted the vital importance of the OWA in enabling workers, particularly workers with no other recourse or means of representation, to deal with complex legislation and with the large agency charged with its administration. In particular, workers and their representatives expressed concern over the impact of the recent Bill 99 changes that impose time limits for appeals and new worker obligations. Their views are echoed by a diverse set of groups, including legal clinics, the Canadian Bar Association-Ontario, community organizations, constituency staff of M.P.P.s and, in some instances, employers and employer associations.

There is no question that, as all stakeholders have pointed out, the legislation is complex. The result of continuous amendment over that past 85 years is a formidable legal edifice imposing a complex set of rights and obligations on workers and employers. And as a result of legislative changes over the past eight years, the Board is required to administer simultaneously three benefit schemes. The *Act* confers a great deal of discretion on the Board, and it has developed a large array of policies to structure the exercise of its discretion. To this must be added the effects of the most recent changes in Bill 99, which seek to reorient the system in the direction of prevention, return to work and greater self-reliance, and the major restructuring of the Board presently unfolding.

Given these factors, it is not surprising that most individuals and organizations with whom we met

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Given these factors, it is not surprising that most individuals and organizations with whom we met believe that only workers' compensation specialists are equipped with the necessary knowledge of the law and of the administrator and its policies to protect their rights and deal with the Board. The ordinary worker citizen aggrieved at an adverse decision commonly feels overmatched.

Against this background, it should be recalled that many of the clients seeking OWA assistance have very limited financial resources. Many of these clients speak a language other than English or French as a first language. And while injured workers residing in large communities in southern Ontario potentially have access to a range of resources in the community, many workers in smaller communities do not. In addition, it is important to observe that injured workers outside Toronto have limited access to legal aid for their WSIB issues.

A common theme in our consultations was concern over the proliferation of fee-for-service consultants acting for workers on a contingency or block fee basis. Many organizations expressed concern over the high cost of these services levied on injured workers who are commonly of modest means, and in part over the lack of professional standards or guarantees that clients are getting what they are paying for. In cases in which the worker's primary asset is the expectation of benefits and assistance is provided on a contingency basis, the result is that the insurance fund is in effect subsidizing the workers' compensation paralegal industry. We heard considerable anecdotal evidence suggesting that it is not uncommon for vulnerable workers to be victimized by unscrupulous representatives. In this environment, there would seem to be obvious advantages to the provision of representation services on a no-cost basis.

Many of the organizations with whom we met, including lawyers familiar with the OWA and the OEA, pointed out that the workplace safety and insurance system as a whole benefits from the work of both Offices. They noted that the OWA is renowned for the depth of its expertise and collective experience and that, consequently, their participation in the system ensures more orderly implementation of the legislation and the development of the law. Many organizations contrasted OWA staff to fee-for-service representatives, noting that the OWA representatives are personally disinterested in the outcome of the cases and provide advice that is consistent with both the interests of the worker and of the system.

There is merit in these views, as the agencies charged with the administration of the Act confirmed. Adjudicators at the Board and at the Tribunal, as well Tribunal counsel, have indicated that cases represented by OWA staff tend to move more expeditiously through the appeals process than cases with no representation. They noted that the presentation of facts and argument by expert representatives in an adjudicative setting facilitated more effective, efficient decision-making.

Worker advisory services offer other systemic benefits as well. When a worker advisor does a good job for his or her client, win or lose, the advisor benefits the system by fully presenting the best argument on the facts and law that the worker has, thereby enhancing the capacity of the workplace safety and insurance system to correct its own mistakes. In a perfect system a worker adviser would not be needed. But as Professor Weiler noted in *Reshaping Workers' Compensation*, the justice meted out by a system of mass adjudication (handling more than 375,000 new claims each year) can be rough and mistakes are inevitable. This observation forms part of the basis for his recommendation to establish an appeals tribunal and worker and employer advisors. By testing Board decisions at the operating (primary adjudication) level or at the Board Appeals level, worker advisers improve the chances for getting more decisions right.

In addition, while the client's interest must be the primary interest of the advocate, as a civil servant with no pecuniary interest in the outcome of a decision the worker adviser also has an interest in effective and efficient administration, early resolution, good decision-making and the development of sound law.

A worker advisory service also provides benefits extending beyond the workplace safety and insurance system. In particular, constituency office staff of MPPs, community organizations, social agencies and legal clinics across the province regularly refer injured workers to the OWA. In our consultations, staff of these organizations pointed out that they feel that they have neither the resources nor the expertise to deal with WSIB matters; many have characterized the OWA as "a blessing".

In this context, it should be recalled that Ontario's legal aid system has been under pressure for at least the past five years. As a result of the pressures, and in competition with other even more pressing claims, a worker seeking a legal aid certificate is considerably less likely to be successful than he or she might have been five years ago. Data provided by the Ontario Legal Aid Plan indicate that the number of certificates issued for workers' compensation cases has been steadily declining over the past five years, from 631 in 1994 to 209 in 1997. In addition, we are advised that the certificates issued cover four hours of counsel time, hardly adequate for a complex workers' compensation file.

Community clinic workers in the regions of the province that the review team visited stated that their clinics took on few workers' compensation files due to a combination of factors--the rise in other types of cases, the complexity and time-consuming nature of workers' compensation files and their lack of resident expertise in this area of law. Ontario Legal Aid Plan data confirm a downward trend in the volume of workers' compensation files carried by the province's network of 54 community legal clinics. The data indicate that the proportion of the files that the clinics opened that were workers' compensation files has declined over the past decade, from 12 per cent of files opened in 1989 to 9 per cent in 1997.

In the absence of the OWA, it is highly probable that many of these organizations would be bogged down by a large volume of often distraught individuals bearing bags of complex files detailing years of proceedings with the Board. It is important to bear in mind that the OWA deals heavily in the problem files of the workplace safety and insurance system. Many of them are hard cases involving tough calls, others involve serious problems in the evidentiary basis for a claim-- most commonly confusing, contradictory or inadequate medical evidence--while others display failures in the administration of the system.

Notes of frustration and even desperation are common elements of any discussion with injured worker clients of the OWA who have struggled with their claims over sometimes protracted periods of time. The effects of injury and the resulting physical/mental impairment can include the development of obsessive and even self-destructive and violent behaviours. Effective ways of dealing with the volatile client present a challenge for the system as a whole that the OWA, with the support of the Ministry and the Board, has taken upon itself.

While the case for providing advisory services to workers appears persuasive, it must withstand the argument that the provision of a free representation service simply provides an incentive to appeal decisions that should not be appealed. As a practical matter, however, the OWA tends to represent only some 10 per cent of the workers filing appeals with the Board, while fee-for-service representatives account for a significant proportion of the 75 per cent of Board appeal decisions in which a non-OWA representative appeared. Moreover, it should be noted that the OWA, like a number of other worker adviser services elsewhere in Canada, has in place a procedure to screen cases on the basis of merit. The procedure helps ensure that system resources are not expended on cases without merit (although nothing precludes an applicant from proceeding to appeal on his or her own or with the assistance of a fee for service representative).

In light of the foregoing findings, we conclude that the case for the continued provision of worker advisory services focused on providing advice and representation to injured workers remains compelling.

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Finding No. 2 The functions of the OWA

The OWA has striven to give effect to its new statutory mandate by focusing its resources on the provision of representation services to workers who are not members of a union. This finding is qualified by the further finding that, to fully realize its role in the system and fulfill its mandate, the OWA must adopt a range of measures to enable it to serve more fully and effectively greater numbers of the vulnerable workers in Ontario, and must take a greater role in enabling the expeditions disposition of claims in the workplace safety and insurance system.

The *Act* provides that the functions of the OWA are "to educate, advise and represent workers who are not members of a trade union and their survivors." This section sets out review findings in relation to the manner in which the OWA has interpreted its mandate, focusing first on the actvities or core businesses that the OWA has defined for itself and then on the clients it serves.

Prior to January 1, 1998, the OWA functioned under a significantly less prescriptive mandate. The *Workers' Compensation Act* stipulated only that the OWA "is to be available to any person who is or has been a claimant for benefits under this Act" (s. 96(2)) and, further, that "the Minister shall pay such remuneration and expenses as may be required to carry out such functions as may be assigned ... by the Minister". As a practical matter, the Minister did not in effect "assign" functions and the OWA was generally left to interpret its mandate as it saw fit.

From the moment the OWA opened its doors in the fall of 1985 it had a significant backlog of cases awaiting representation, a backlog that was not eliminated until 1996. This reflects one of the defining characteristics of Ontario's workers' compensation system over the past 13 years, the explosive growth of appeal activity. In this environment, the OWA did not have to seek far to determine its mandate: at its core the OWA has always been a case-driven organization, externally driven by the high demand for its representation and advisory service. At its peak in the early 1990's, the OWA experienced a surge in the volume of service requests, which exceeded 30,000 in 1994-95.

Advice and representation are terms that cover a spectrum of activity, ranging from summary advice provided by the OWA's fifteen intake counselors to carriage of a range of cases by 51 worker advisers including complex cases that involve negotiations, evidence gathering and multiple submissions and hearings. Based on OWA-supplied data, of the more than 19,300 requests for service in 1997-98, some 91 per cent were disposed through summary advice while close to 1,800 files were actually opened. In that year, the OWA achieved resolution of 3,256 cases, of which just over 1,000 went to hearing at the Board or the Tribunal. Board data for calendar year 1997 indicate that the OWA represented workers in 1,596 appeal level decisions, or about 10 per cent of all appeal decisions (15,267).

The OWA does not proceed with all cases brought to it. Some files are "selected out" on the basis of the nature of the appeal: generally, subject to some exceptions, the OWA will not carry forward appeals on a range of matters that it deems workers can manage themselves (eg. appeals involving the re-calculation of monetary amounts, variations in pension or non-economic loss awards). The case selection procedure was adopted initially to enable the OWA to address its two-year waiting list beginning in 1994-95.

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Although the backlog has largely been eliminated (except in two regions), the procedure has been maintained, it appears, principally on the basis that it encourages greater worker self-reliance, which in the view of the OWA is consistent with the objectives of Bill 99.

The other procedure adopted to reduce the OWA's backlog is to subject those files designated as full representation files to a review for merit. In cases in which an adviser considers that there is very little merit in the appeal and no realistic chance of success, the worker is advised in writing of the OWA's decision not to take the case and the reasons for it.

It appears that an increasingly larger proportion of the OWA's files are being settled without having to go forward to hearing, either at the operating level prior to appeal or, to a much lesser extent, before an appeal is heard at the Tribunal. This reflects the OWA's commitment to early intervention/ADR and is consistent with changes in the legislation and at the Board. Of particular interest in this connection is the early intervention program that the OWA has developed with Dofasco, a large Hamilton-area employer. The objective of the program is to work with the employer and the workers to ensure effective and efficient resolution of claims arising from workplace injuries. This is a model initiative that demonstrates the capacity of the OWA to contribute to more effective resolution of cases across the system.

The OWA also continues to allocate resources to what staff commonly refer to as "outreach" activities. This term captures a range of activities including education and the preparation and distribution of resource materials and an array of information sheets, brochures and pamphlets, delivery of training, clinic and information sessions, and participation in a broad range of community and organized labour fora. OWA performance standards require that 10 per cent of staff time is required to be devoted to outreach. The proportion of the organization's resources that are actually allocated to these outreach activities is unclear, as is the extent to which the activities come within its "education" mandate. As will be noted in the Operational Findings below, the impact and efficacy of the outreach is also unclear.

In addition to its statutorily mandated functions, the OWA has been required to administer monies provided to three organizations for purposes of providing training and education in workplace safety and insurance. The OWA has been assigned the role of transferring monies in the amount of $1.245 million (for 1998-99) to the Ontario Federation of Labour, the Provincial Building and Construction Trades Council of Ontario and to injured worker groups-- the Ontario Network of Injured Workers, the Toronto Injured Workers, Thunder Bay and District Injured Workers and (presently) 17 smaller groups. The OWA is responsible for ensuring that the expenditures made by these entities are in accordance with the terms of the funding agreements and government directives regarding such transfers. The monies are transferred generally on the theory that the programs so funded will enhance the capacity of workers and their bargaining agents to deal with workers' compensation matters.

The OWA's focus on the provision of advice and representation services is consistent with what workers and worker organizations consulted in this review told us is the most important service provided by the OWA. Injured worker groups and unions, as well as a variety of community groups, also praised the OWA's manuals and other learning materials, and felt that the preparation of such materials was a particularly important service to workers across the province in an environment in which increased self-reliance in dealing with WSIB matters is encouraged and even required. The injured worker clients with whom we spoke were generally unaware of OWA outreach or training/information material.

The OWA has taken the view that this is a critical role for its staff given the emphasis on self-reliance in the *Act*. The OWA sees itself as an enabler of self-reliance, showing workers how to help themselves and training community and labour organizations and MPP constituency office staff to deal with the changing law and Board policies.

A key concern of the unions that participated in the consultations was the change in the OWA's mandate that expressly excluded the provision of education, advice and representation services to unions. The Ontario Federation of Labour and major unions affiliated with it maintain the position that the change unfairly discriminates against unions and the workers who are their members. They note, in particular, that the change has placed small union locals in a difficult position since such small units simply do not have the resources to take care of the WSIB issues of their local members.

In the course of our meetings, union representatives noted that, while the OWA no longer represented union members in proceedings before the Board or the Tribunal, they still had regular access to advice from OWA staff on WSIB issues and to OWA education programs. They contended that it benefits the system when a union worker representative has the benefit of OWA advice by ensuring a higher quality of representation for the unionized worker.

The extent of OWA resources allocated to serving the advisory and related needs of unions is not clear, largely because the amount of time devoted to union clients across the organization is not tracked. While it is clear that the organization by and large has focused on serving vulnerable workers who generally have no other means of representation, it is not possible to find with confidence that its services are generally restricted to them.

This finding reflects a broader concern associated with the OWA's transition to its new, non-union mandate. The transition did not present a challenge from one perspective: the OWA had shifted in the direction of providing representation services to non-unionized workers as far back as 1993, as part of its concerted effort to reduce the then large backlog of cases and in light of the provision of government funding that was to serve to make organized labour self-reliant. As a result, this aspect of the mandate change was not problematic.

What has proven more problematic is the process of disentanglement from the OWA's former key client group, organized labour, and the re-focusing exclusively on the non-organized workforce. The issue has consumed significant management and staff time and energy, including the generation of an internal protocol to deal with the matter, and the change has not been easy to implement. This reflects in part the long-standing close relationship of the OWA as an institution and of individual staff members to the union movement. The difficult transition also reflects the fact that it is much easier for the OWA to reach and serve organized workers than it is to reach and serve the large proportion of the workforce that is not organized.

As a result, we have found that the OWA continues, to an undetermined extent, to serve the needs of workers who are members of a union, and to the extent that it continues to dedicate some portion of its finite resources to this set of clients (who are the beneficiaries of the transfer payment program), it is not providing service to the larger number of workers who are not members of a union. And to that extent, although the OWA has striven to fully implement its new mandate, it still has some distance to go in achieving full conformity.

It is worth noting in this connection that, based on Board appeals data, some 20 per cent of Board appeal level dispositions (2,539 decisions) were issued to workers who had no representation when they appeared before the Board, and the Tribunal advises that in any one year more than 20 per cent of appellants appearing before it have no representation. The reviewers note that there is evidence to suggest that at least some of these unrepresented workers had been denied service by the OWA as a result of its triage processes, although the number of workers in this situation is not known.

The OWA has not succeeded as yet in defining or coming to terms with this potential "market" for its services. It should do so for a number of reasons. First, as we noted in Finding No. 1, there are systemic benefits, in the form of improved efficiency and correctness, to securing representation for unrepresented workers. Second, as many have observed, both the system and individual workers would benefit from the OWA acting for at least some of the clients who retain the services of unregulated paralegals. Third, a more active role in representation and, more broadly, in the case management process at the Tribunal, may well be of value in assisting the Tribunal to cope with the surge of cases it has experienced in 1998. Fourth, the successful project with Dofasco might provide a model or test-case to support additional, comparable forays into the world of larger non-unionized employers, possibly with the assistance of the OEA and even the Board.

In coming to terms with this market and, thereby, its statutory mandate, the OWA should also give further consideration to its commitment to worker self-reliance and "outreach". Questions are raised in the Operational Findings as to the appropriateness of the OWA's self-reliance strategy, principally on the ground that the OWA does not know whether its measures (high targets for summary advice and self-reliance) are in fact resulting in more self-reliant workers. If the net effect of this strategy is merely to shift the burdens associated with unrepresented workers to other institutions or to shift demand to paralegals, the strategy merits further review.

From a functional perspective, there are questions as to whether the strategy is consistent with the role of the OWA as adviser to vulnerable injured workers and with the intent of the legislation. It is arguable that the concept of self-reliance underpinning the Bill 99 changes has more to do with the parties assuming appropriate responsibility for, among other things, getting back to work and ensuring that their claims and appeals are filed within a reasonable length of time, than it does with vulnerable injured workers handling their own problems.

In the area of "outreach", the OWA should take measures to ensure that such endeavours are targeted to the extent possible at vulnerable workers in need of representation. In doing so, management should bear in mind the probability that the larger part of the OWA's potential market are injured workers who have never heard of the OWA and unlikely ever to hear of it at a clinic, a workshop or information session put on by the OWA simply because they do not attend such fora. Nor would such workers make use of training manuals or other resource materials. It is equally probable that participants at such fora are more likely to be workers with an awareness of these matters and involved in union or injured worker organizations.

It is on this basis the reviewers feel compelled to qualify their finding that the OWA has appropriately focused its resources on providing representation to non-unionized workers and has made significant strides in giving effect to its new statutory mandate. The qualification is that the OWA has yet to complete the transition from its former well-established client base in organized labour to its new, more diffuse and harder to reach client base.

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Finding No. 3 Role of employer advisory services in Ontario's workplace safety and insurance system

There is a legitimate role for a service that provides advice and representation to employers in the current workplace safety and insurance system, although the case is not as compelling as it is for the parallel service for workers. The case is based on the need to assist small employers in managing better the risks and consequences of workplace illness and injury, on the benefits to the system of expert, disinterested advocacy and on the desirability, from the perspective of employers, of maintaining an advocate that speaks for the interests of employers generally and thereby helps provide balance to a system that funds a workers' advocate.

In recommending the creation of an Office of the Employer Adviser, Professor Weiler pointed out that employers have a legitimate interest in and role to play in the administration of workers' compensation, particularly with (the then anticipated) advent of experience rating. He further noted that employers, particulary small business owners, frequently find the workings of the WCB as mysterious as workers do, but do not have access to advice and assistance that workers have and must pay a high price for their education by retaining lawyers.

Professor Weiler's reasoning is echoed today in the views of the employers and employer associations consulted during the course of this review. Now that experience rating has been an entrenched feature of Ontario's system for more than a decade, employers and the bodies that speak for them vigorously assert their legitimate interest in and even their right to influence the administration of the workplace safety and insurance system.

The employers and associations we spoke with generally expressed an abiding mistrust of the Board. While employer associations in general felt that the Board has made progress in becoming more sensitive to customer needs and earning employer trust, all felt that the Board has a considerable distance to go before the OEA should be dispensed with. These views were confirmed in meetings with individual employer clients of the OEA. In describing the services they valued, some employers noted that they preferred education sessions sponsored by the OEA rather than those mounted by the Board because they feel that these programs are delivered from the perspective of the employer. In their view, these programs deliver what the employer needs, not what WSIB feels it requires.

Like workers and their representatives, employers and their representatives point out that the law and the administrative system have become so complex and employer obligations so numerous that some form of assistance, paid out of the insurance fund, is vital. While a workers' compensation consulting industry has grown up in Ontario since Professor Weiler's 1980 report, employers, particularly small employers and public sector employers, complain that they simply cannot afford to pay the costs of those services.

A particularly important consideration from the perspective of most employers appears to be the issue of balance in the system. Many groups and individuals with whom we met expressed the view that employers need an agency that speaks for them in a system that gives workers a voice and representation through the OWA. Given this and the foregoing considerations, employers felt strongly that an agency representing employer interests was not only justifiable but necessary in a system funded by employer premiums. It is worth noting that worker organizations also generally took the position that employers need access to employer adviser services and require an agency to represent them in dealings with the WSIB system.

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Some larger employers who had been OEA clients expressed disappointment that the OEA was now precluded from serving larger employers and observed that this is inequitable in a system funded by all employers. The concern was particularly acute for cash-strapped broader public sector employers. However, it was generally conceded that it made sense to focus the OEA's limited resources on those who needed it most, smaller employers.

Lawyers with whom we met observed that one of the advantages of a government agency providing representation services is that the service provider is a disinterested advocate who represents the best interests of the client in a way that is also consistent with the interests of the system. The systemic value of expert employer advocates was also emphasized by Board and Tribunal adjudicators, who noted that the OEA, like the OWA, enhanced the decision-making and case management process by bringing informed, objective advocacy skills to bear on the evidence they must weigh.

Noting that employer advisory services are far less common across Canada than worker advisory services--there are three in addition to the OEA--the reviewers took into account a number of considerations that weigh against the need for an employer advocate.

First, in contrast to the situation 15 years ago, a network of employer associations and organizations has emerged to put forward the interests of employers in the area of workplace safety and insurance. In addition to the Employers' Advocacy Council which is focused exclusively on WSIB issues, the Canadian Federation of Independent Business, the Employers Council of Ontario, the Ontario Chamber of Commerce and a broad array of industry and trade groups represent employer interests in this area. In addition, employers in Ontario today do have access to an array of private sector service providers, who employers will retain when it becomes cost effective to do so. While the cost burden associated with retaining private sector advice and representation may be prohibitive for a significant number of very small employers, it will be rare that an employer will find itself in the position of the vulnerable injured worker that is the target client of the OWA.

Second, it cannot be said that the Board is insensitive to the concerns of employers. As part of its strategic plan, the Board has restructured its delivery of services to employers: employers are now provided the full range of workplace safety and insurance services on a sector specific basis, including the small business sector. The Board notes that the benefits of this restructuring have yet to become tangible and has indicated that they will be felt within three years.

Third, as subsequent findings make clear, the OEA has been suffering from a shortage of demand for its services. While a number of factors account for this situation, it may at the very least be inferred that the need for an employer advisory service is simply not as compelling as the need for a worker advisory service. That may explain in part why most Canadian jurisdictions provide worker advisory services but only four provide employers with such a service.

Moreover, since the number of employers served is small relative to the number of registered employers in Ontario (some 182,000), this circumstance raises the question, from an equity point of view, why should some employers have no-cost access to representation that all employers pay for, including employers who retain fee-for-service consultants and lawyers to represent them?

Put simply, the dilemma is that if the OEA provides a high quality, expert service to smaller employers that is free of charge and can save the employer assessment dollars in the appropriate case, why is the demand for its services so much lower than the demand for OWA services? When we raised this dilemma with employers during the course of consultations, the common response was that the OEA is simply not well enough known. This is undoubtedly true, but there are likely additional factors that account for the low demand as well, including the presence of a large number of skilled private sector service providers that deliver results. These are examined in the next finding.

In balancing the competing considerations, we come to the conclusion that there is at this point in time an ongoing role for an employer adviser service, although the case is certainly not as compelling as it is for the parallel service for workers. The case is based on the need to assist small employers in managing better the risks and consequences of workplace illness and injury, on the benefits to the system of expert, disinterested advocacy and on the desirability, from the perspective of employers, of maintaining an advocate that speaks for the interests of employers generally and thereby helps provide balance to a system that funds a workers' advocate.

Small employers, who constitute the bulk of employers registered with the Board, require the expert assistance provided by such a service free of charge to them. Some 162,000 of the 182,000 employers registered with the Board have fewer than 20 employees. These small employers experience, on average and depending on the sector, a claim once in seven to nine years. As small employers, they commonly have neither the resources of the large employer to address the implications of a claim nor do they typically have access to the information and services required to manage risks in their workplaces. Since the claims experience of the small employer is generally very limited, there is no compelling incentive to make the investment in knowledge and in injury avoidance and return to work strategies.

Yet, when a claim occurs, its impact on the costs of doing business can be very significant for a small enterprise with few resources to cope with the claim. In any one year on average, this happens to over 20,000 employers. The thirty or so small businesses we heard from during the course of the consultations have attested to the almost devastating impact that one or two claims can have and to the importance of an employer advisory service in assisting them to manage the consequences.

The importance of reaching and assisting small employers with a view to managing better the risks of injury and illness in small business has been recognized. The Board has established a small business sector division to deal with small employer issues, and the Ministry of Labour, in a document entitled *Preventing Illness & Injury: A Better Health and Safety System for Ontario Workplaces* (January, 1998), has identified small businesses as a major challenge in achieving improved health and safety performance. Pending the achievement of the objectives of the Board's and Ministry's common strategy in this area, there remains an important role for an employer advisory service in assisting small business.

The other key role for an employer advisory service is a systemic one, parallel to the role of the worker advisory service. As advocates who are disinterested public servants, OEA specialists bring to bear on their files a commitment to the best interests of the client and to the system as a whole, a system which is funded by employers. The benefits of the adjudicative process in testing the validity of claims have already been noted in the OWA findings and are applicable here.

Finally, employers in Ontario, speaking through the numerous associations that represent their interests, have long vigorously maintained the need to preserve balance in a workplace safety and insurance system that funds a worker advocate. While employer representatives have from time to time questioned the activities of the OWA, they have generally supported its role and have taken the position that employers also require a comparable advocate, taking issue only with the apparent imbalance between the size and budget of the two organizations.

These conclusions are subject to one proviso. The OEA must define its role more clearly, enhance its effectiveness in the system and, in doing so, demonstrate that there is, indeed, as significant a role for it as has been suggested here. This is the subject of the next finding.

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Finding No. 4 Functions of the OEA

The OEA has striven to give effect to its new statutory mandate by focusing more of its resources on smaller employers and on activities other than representation and advice, including education and consulting. The transition has been difficult and, although small employers should be the predominant focus of its activity, large employers continue to form a significant proportion of the OEA client base. Consequently, while employers who have been assisted by the OEA place a high value on its services, the OEA faces a significant challenge in maximizing its effectiveness within the system.

The *Act* provides that the functions of the OEA are "to educate, advise and represent primarily those employers that have fewer than 100 employees." The following discussion reviews the manner in which the OEA has interpreted its mandate, focusing first on the activities or core businesses that the OEA has defined for itself and then on the clients it serves. Like the OWA, the OEA functioned under a significantly less prescriptive mandate in the legislation applicable prior to January 1, 1998. The *Workers' Compensation Act* stipulated only that "the Minister shall pay such remuneration and expenses as may be required to carry out such functions as may be assigned ... by the Minister".

It appears that the focus of the OEA in its early years was the provision of advice and representation, although education and training were also considered to be important. A particularly important role it carried out from time to time over its first eight years was to represent the position of employers in "leading cases" before the Tribunal, to ensure that the perspective of employers and the interests of the insurance fund were taken into consideration as the Tribunal developed the law in significant new directions. In such cases the Tribunal invited intervention from interested parties.

While the OEA had long assumed a role as a voice of the employer community, at some point in 1993-95 it moved progressively further into a policy advocacy role, developing general positions on a range of issues and working in concert with at least some employer groups to move those issues up the Board agenda. There was disagreement in the employer community as to the appropriate role of the OEA in this area, a matter which some employer associations raised during this consultation process, noting their disapproval of this role. There no evidence to suggest that policy advocacy remains a feature of the OEA's activities today.

The life of the OEA became more turbulent after the publication of Minister Jackson's *New Directions* report. The July 1996 recommendation to close the OEA was followed five months later, in the form of the first reading Bill 99, by news that the OEA would be continued, but with a new mandate and subject to sunset review at the end of 1998. The consequences of this protracted period of uncertainty include the loss of experienced, productive staff , decline in staff morale and the loss of visibility. On this latter point, it seems that many employers simply concluded, in the wake of the *New Directions* report recommendation (which attracted a fair degree of attention), that the OEA had in fact been closed.

Perhaps the most significant impact of the mandate change has been the profound effect that the amendment had on its client base, some two-thirds of which consisted of large employers in 1995. Even more daunting must have been the realization that the new clients were, by their very nature, harder to reach than the then stable of larger clients. This is because the larger, more sophisticated clients with

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Finding No. 4 Functions of the OEA

The OEA has striven to give effect to its new statutory mandate by focusing more of its resources on smaller employers and on activities other than representation and advice, including education and consulting. The transition has been difficult and, although small employers should be the predominant focus of its activity, large employers continue to form a significant proportion of the OEA client base. Consequently, while employers who have been assisted by the OEA place a high value on its services, the OEA faces a significant challenge in maximizing its effectiveness within the system.

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Smaller businesses, particularly those with under 20 employees, are different from the workplace safety and insurance system perspective: they are focused on managing their businesses and focus little, if any, attention on workers' compensation matters; they do not have specialist staff hired to manage such risks; they commonly do not take a role in or pay much attention to employer associations; and few have ever heard of the OEA. The Board, in establishing its small business sector division to deal with small business, is faced with many of the same challenges. In the face of this mandate change, a significant budgetary constraint in late 1996 and a commitment to provide value-added services at the lowest cost, the OEA reviewed its core business and operations, and in 1997 it restructured and pared down its staff. The new structure is considered in detail in the Operational Findings.

Although representation remains a core business, the OEA does less of this work than it once did; representation work accounts for some 28 per cent of total staff time. OEA data for 1997-98 indicate that the OEA represented employers in some 800 cases, some 550 of which were resolved at the operations (pre-appeal) level. This result reflects the OEA's commitment to early resolution. Board data for 1997 indicate that the OEA represented employers in just 95 of the 16,863 decisions rendered in the Board's integrated appeals system. Tribunal data do not as effectively track the identity of representatives, but do indicate that in 1997 the OEA acted on behalf of employers in 107 appeals, or five per cent of all appeals disposed by the Tribunal. This appears generally consistent with past OEA activity levels before the Tribunal.

An increasing emphasis is placed on the delivery of education seminars and workshops on key system issues, such as the new legislation and return to work. OEA data indicate that in 1997-98 staff delivered 216 workshops and presentations to some 6,285 participants, which involved roughly 12 per cent of total staff time (excluding travel and preparation time). The education services are supplemented by the provision of information through the distribution of a small business guide to more than 15,000 small businesses and the creation of a fax-on-demand service. The theory underlying this shift is that with its limited budget, the OEA can add more value to the system by educating employers about their rights and obligations under the *Act* or strategies to minimize costs and manage risks. This is similar to the strategy adopted by the Employer Adviser in British Columbia. This shift in emphasis also addresses the decline in representation business that appears to have accompanied the mandate change.

The provision of summary advice, which has now been centralized in a Toronto call centre, remains a core part of the operation, occupying four staff full time and taking some 16 per cent of total staff time. The OEA has also added a new line of business, the provision of consulting services to employers, a form of summary advice on a broad range of workplace health, safety and insurance issues. The strategy here is to visit the work site, either at the invitation of an employer or on the basis of a "cold call", review the employer's workplace practices on a range of matters from prevention to return to work and provide a four page checklist outlining areas for improvement. The objective is to provide basic assistance to employers with clear deficiencies in these areas and refer them to the appropriate Safe Workplace Association where desirable. The goal for the current year is to conduct 800 such audits, although the OEA will likely fall significantly short of that target.

The OEA has also striven to give effect to the intent of section 176(2) to refocus the OEA on the needs of small business. Although the OEA has not been entirely successful on this front up to this point, it has made progress-- according to OEA data, employers with fewar than 100 employees now constitute close to 70 per cent of its client base. The OEA no longer represents larger employers in their dealings with the Board or the Tribunal (except in respect of files opened prior to January 1, 1998), although it will provide advice and related support to larger employers to enable them to carry forward their own files. In addition, the OEA continues to provide summary telephone advice to all employers without regard for size.

Overall, like the OWA, the OEA has found the adjustment to the new mandate to be challenging, in part because it is difficult to move away from well-established ties of association. The personal costs are high, and the new market is simply less accessible. As noted earlier, in contrast to large sophisticated employers, smaller employers generally are not aware of the OEA's existence. One effect of this reality is that the OEA has been compelled to dedicate a significant amount of its employer specialist resources to activities designed to raise awareness of its existence.

While the OEA has demonstrated a commitment to focus on small business, it remains the case that considerable resources continue to be tied up in serving larger businesses and in marketing the availability of the OEA. As a result, those resources are not being dedicated to the clients that the legislation directs should be served.

The OEA's education strategy is a case in point. Although small business owners and staff do attend OEA-delivered programs, it is in the nature of such programs that they inevitably cater primarily to businesses of a size large enough to permit the employer to dedicate a day or half-day of staff-member time to attending the program. Sophisticated employers invest in education programs because they assume that there will be a return in the better management of workplace risks. Many small businesses simply do not have the resources to send a staff member for such a program, and most small business owner/operators rarely have the luxury of time to attend themselves. As such, serious questions need to be raised, in light of its statutory mandate, as to the efficacy of the OEA's investment in the delivery of education programs on the current basis.

Based on the OEA's own client surveys and what we heard in the consultations, those who attend the programs are very satisfied. However, when we asked employers what they felt was the most important service the OEA provided, they uniformly responded: just-in-time advice and representation services. Smaller employers, who indicated that they had no realistic access to other sources of representation, generally placed a very high value on timely access to the advice they need when they need it, usually when they are faced with a claim. They also placed great value on expert representation services, in part because they felt that retention of private sector service providers was simply out of reach financially. Interestingly, this group included a number of small public sector institutions classified as hospitals which regarded the OEA as the sole source of assistance to the cash-strapped broader public sector.

Most small employers were not aware of the OEA's education programs, but large employers and employer associations uniformly regard these programs as valuable. This feedback confirms our finding.

The foregoing should not be construed to say that the OEA has no business in education. The statutory mandate contemplates a role in this area for the OEA, and the OEA's rationale for delivering such programs remains sound: there are system benefits associated with educating employers in their rights and obligations under the *Act*, in leading employers to the conclusion that an investment in sound workplace practices benefits both employees and the bottom line, and in enabling greater employer self-reliance in the area of managing claims. Moreover, the OEA has fulfilled a valuable role in the system by providing programs on return to work under Bill 99 at a very early stage of the implementation of the new law.

At the same time, it is also true that the participants in education programs are likely to be employers who are good performers in the workplace health and safety system, and less likely to be the bad performers who impose disproportionately high costs on the collective liability system. The point advanced here is that the extent of the OEA's role in providing education services should be effectively targeted and directly linked to the effect of the education programs on changing employer behaviour.

Many of the employers and employer associations we spoke to were surprised when we described the OEA's consulting service, including the checklist, and asked whether they would find it valuable. Employers invariably pointed out that the OEA's line of business should be focused on claims management rather than consulting, and that health and safety and prevention issues are better handled by specialized entities like the Safe Work Associations. Employer reaction to a description of this service is, in our view, justified. As will be noted in the next section of this Report, questions arise as to the extent to which the consulting service is a core competency of the OEA and in competition with services that are or will be provided by Safe Work Associations, which have well-established regional networks and are likely more appropriately staffed.

The lesson to be drawn from the foregoing is that the OEA is most valued when it provides services in the area reserved expressly for the employer advocate: representation and advice that employers need when they need it. And the employers who need such services at no direct cost are commonly those smaller employers for whom the retention of a lawyer or paralegal consultant imposes significant cost pressures.

Similarly, the OEA is most valued from a system perspective when it represents employers impartially and responsibly before the Board and the Tribunal. As the employer's advocate, the OEA ensures that all the evidence and arguments in respect of a particular claim are before the adjudicator, thereby enhancing the capacity of the system to make the right decision. In this connection, employers have long maintained that the OEA should take a role in representing the interests of the employer in significant cases before the Tribunal in which there is no employer representative. This recommendation, which was repeated during our consultations, is based on the theory that in such cases a representative of the interests of employers as a whole should be present to test the evidence and arguments underlying a finding that could have significant consequences for the insurance fund. There is much to commend this suggestion, and the OEA should, in consultation with the Tribunal, examine the costs and benefits of implementing it.

There may be other system-based objectives that the OEA can help achieve while serving its clients diligently. For example, the OEA is uniquely placed to address assessment issues that arise as a result of a problem in the assumptions underlying a particular employer classification; such issues may arise as a result of changes in an industry or work process that materially affect the assignment of risk. The OEA may also have a significant role to play in enhancing the ability of the system to resolve disputes over entitlement, return to work or labour market re-entry, and thereby contribute to reduction in the volume of cases going to appeal at the Board or the Tribunal.

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Finding No. 5 Relationship of the OWA and the OEA to the other institutions comprising the workplace health and safety system

The ability of the OEA and the OWA to fully realize their roles and optimize their value to clients and to the system is, in varying degrees, constrained by the limitations on their ability to coordinate their planning and activities with the strategic objectives and activities of the other institutions in the workplace health and safety system.

It will be recalled that the Offices were initially established as branches of the Ministry of Labour, and became agencies of the Ministry in 1991. They were established as branches of the Ministry in order to preserve their independence from the Board in representing the interests of employers and workers in a manner that is consistent with the best interests of their clients. The evidence suggests that the change in status to agencies had little immediate and direct impact on the Offices other than to confirm what had become as a matter of practice a ministry-agency relationship. However, the formal change did entail significant consequences.

As branches of the Ministry, the Offices were directly accountable to the Ministry for all operational and functional purposes, and their directors reported to the next superior officer of the Ministry, either an executive director or an assistant deputy minister. As agencies classified "schedule 1" in the government's agency classification system, the Offices enjoy an arms' length relationship to the Ministry for functional purposes, that is, for purposes relating to how they interpret and implement their mandates. As the legislation stipulates, they are accountable to the Minister in respect of the manner in which they carry out their roles and meet their responsibilities. As schedule 1 agencies, the Offices employ civil servants, receive administrative, financial management and human resources support from the Ministry, are subject to most of the governing directives issued by Management Board that the Ministry is subject to, and are accountable to the Deputy Minister for the manner in which they operate.

As such, the Offices are governed by the same administrative and managerial rules that govern all schedule 1 agencies. However, the Offices differ from most schedule 1 agencies in that they are not funded from the Consolidated Revenue Fund. The *Act*, like the predecessor *Workers' Compensation Act*, provides that "the Minister shall determine the amount of the costs that may be incurred by each office in performing its functions and the Board shall pay them." This provision makes clear that the Offices are part of the workplace safety and insurance system but preserves both the appearance and the fact of their independence from the Board.

There are advantages of this arrangement in terms of the flexibility of the agencies in carrying out their mandates in light of the needs of the system as they see them, but there are disadvantages as well. The arrangement places the responsibility of oversight on the Ministry, but the Ministry is not solely responsible for administration of the system that generally governs the behaviour of the Offices; and the Board is responsible for administration of the system, but has no clear role in the governance of the Offices, even though it pays the bills. The Ministry allocates the monies on the basis of business plans and budgetary proposals but is somewhat limited in its capacity to determine whether or not the funds are being expended on the right activities for the right results (the expertise to make this assessment resides predominantly with the Board). The Ministry recovers from the Board the monies it allocates to the Offices and the Board simply recognizes the recovery as a "Legislated Obligation" in its financial statements.

Moreover, as schedule 1 agencies, the Offices are subject to requirements and pressures that may be foreign to the Board. This is evidenced in times of government budgetary constraints, when there is

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Moreover, as schedule 1 agencies, the Offices are subject to requirements and pressures that may be foreign to the Board. This is evidenced in times of government budgetary constraints, when there is pressure for the Offices to reduce expenditures even though they are not funded out of the Consolidated Revenue Fund and the needs of the workplace safety and insurance system may dictate a different strategy. This concern is common in other jurisdictions as well, many of which have similar financial arrangements.

Evidence for the problematic consequences of the way in which these relationships are structured is found in the first half of the 1990's, when concern arose over the increasing involvement of the Offices in quite public policy advocacy at the expense of the Board. More recently, a degree of overlap has been observed between the Board and the OEA in the delivery of education and information.

Although such incidents are not common, they illustrate the existence of a gap in planning and coordination that is suggestive of deficiencies in the present framework. As a result, the Offices are generally left to their own devices in interpreting and giving effect to their mandates. The results may not always be optimal and may hamper the ability of the Offices to fulfill their roles appropriately and carry out their mandates effectively.

It is important to note that this is more of a concern for the OEA than it is for the OWA, since the OWA remains fundamentally a case-driven operation and has not had to look far for its *raison d'etre*. The OEA, as we noted above, has struggled to locate its role in the wake of profound changes to its mandate, to the Board and to the workplace safety and insurance system as a whole. In response to the re-orientation of the system in the direction of prevention and return to work, for example, the OEA has undertaken to provide its clients return to work education programs; and it has been delivering a prevention message through its programs and its new consulting service even as the Board is working in concert with the Ministry and the seventeen Safe Workplace Associations to develop a cohesive strategy in prevention and return to work.

It should be remarked that there is a degree of largely informal coordination in the system among the Board and the Offices. For example, there tend to be long-established and effective relationships between OWA staff or OEA staff and Board staff in most regions; Board staff attend OWA liaison committee meetings; and the heads of the Offices and the Tribunal together with the Board's director of appeals sit on a Case Coordination Committee for purposes of exchanging information on case management issues. The directors of the Offices have fairly frequent contact with Board senior management in an effort to enhance coordination, communication and the flow of information, but there is little evidence of reciprocity or joint planning.

It has often been asserted that the Board is the manager of the system. Bill 99 affirmed this view by bringing the Safe Workplace Associations within the scope of its responsibilities in Part II of the *Act* and by ensuring that the Board has the final say in matters of policy under the *Act*. On this view, it would seem that the Board has an interest in the actions of the other system players that are independent of the Board. Indeed, the fact that the Board funds the Offices suggests that it would be sensible for the Board to have an interest in seeing them undertake activities that contribute to the achievement of system objectives. To achieve this goal, however, it is necessary for the Offices to have access to the information they need, and the Board possesses, to make effective planning decisions and to be effective in the system.

The argument here is that the Offices can be considered partners in achieving common system goals. Both parties are likely to benefit from measures to transform their current relationships into a relationship characterized by a healthy tension. The Offices, particularly the OEA, would be more likely to fulfill their mandates effectively, and the Board will be more likely to realize some benefits from its involuntary investment in these services. For example, the OEA is required by law to serve smaller employers, who are also the clients of the small business services division established by the Board as part of its sector-based restructuring strategy. There is clearly a common interest here, and a common set of challenges.

More generally, the Board has natural allies in these Offices in its pursuit of streamlined adjudication and dispute resolution processes. Fair and timely adjudication is a common goal of all three entities. If this is admitted, the next step is to enable some degree of coordinated planning among the entities that will expedite the achievement of this goal.

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III. Operational Review Findings

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Context for the Review

The Offices have striven to give effect to their new mandates and manage the ongoing provision of services in a changing public sector environment. Not only have the Offices been required to adapt, plan and manage through a period of considerable uncertainty since the fall of 1995, but they have had to do so during a period of change in both the law under which they function and the public service organizations within which their staff work.

The uncertainty and instability surrounding the Offices together with new accountability requirements have made the Offices difficult environments within which to manage and to work effectively. The consequences of change have included low morale, a sense of not being valued, resistance to change and to enhanced accountability, absenteeism, the loss of productive staff, and heightened tensions between management and staff.

Pressures from changes in the OPS

Change has become a by-word of the Ontario Public Service ("OPS"), as ministries restructure, as programs change, devolve or are terminated, as budgets are reduced and as internal services are rationalized. As an outcome, ministries and schedule 1 agencies are expected to better manage their businesses and comply with new corporate requirements aimed at improving service efficiency and effectiveness.

As schedule 1 agencies, the Offices are subject to a host of new requirements designed to improve accountability and customer service. Although the effects of these new requirements are positive, implementing them involves certain costs, including the dedication of significant management time and the risk that the new demands require skills or competencies beyond those of the organizations.

Of particular importance is the obligation to prepare and live by business plans. The Offices are subject to the new business planning regime that all ministries are now required to implement. The Offices have prepared their business plans in light of both overall Ministry of Labour business objectives and those of the safety and insurance system. The effect has been to raise the degree of accountability of the OEA and the OWA and to require them to improve their management of and reporting on performance. This year, the offices have taken on additional obligations under the Ministry of Labour's commitment to implement a quality service framework as part of an OPS-wide strategy to enhance service quality.

Other corporate pressures have also affected the Offices. Like most public sector agencies, the Offices have been required to manage in the face of budgetary constraints. Financial pressures constituted the prime driver for the OEA restructuring into its current service delivery model. The OWA, although it did not face the same degree of constraint, has adjusted to these pressures by managing vacancies as they arise and by transferring files internally. The ongoing rationalization of internal services within the OPS has also played a role in affecting service delivery. Particularly noteworthy has been the rationalization of government-owned and leased office space, which benefits the government as a whole but has adversely impacted the OWA by moving community based/store front offices into more traditional office space, and thereby distancing OWA from its market.

In addition, OWA staff are concerned over the potential implications of the recently completed review of positions in all bargaining units across the OPS. The impact of this process is not clear at this point but may negatively affect advisory staff in terms of status and remuneration. It has also had an adverse impact on the morale of front line staff who interpret the result as a signal that their work is not valued.

Pressures from Changes to the Workplace Safety and Insurance System

The workplace safety and insurance system has been under the pressure of continuous review and change over the past decade. Bill 99, which came into effect on January 1, 1998, changed the benefits regime that had been in force since 1990 (the dual award system), added a host of new obligations for workers and employers including the introduction of time limits for applications and appeals, and changed the mandates of all the agencies in the system. The Bill also sought to re-orient the system and introduced a number of new concepts--prevention, return to work, labour market re-entry--couched in unfamiliar language set in legislation that represented a re-writing and re-ordering of the old *Act*. The challenge of adapting to a new statutory regime that imposes serious consequences for failure to comply with time limits while having to live through another review understandably generated anxiety among staff.

As the law was changing so was the Board. In response to Bill 99 and to pressures to improve service delivery, the Board has restructured and changed its service delivery model, moving to an industry sector-based service model that integrates formerly balkanized functions (claims management, account management, adjudication, etc.). Changes in how the Board administers the *Act* have, obviously, profound implications for the Offices, and for the Tribunal. For example, as the Board has restructured, a concerted effort has been taken, with the recent adoption of an integrated appeals system, to address outstanding appeals. Since a significant proportion of the cases that the Board denies at appeal are further appealed to the Tribunal, the effect of the Board's efforts has been to push forward a large volume of appeals to the Tribunal at once. The resultant appeals bulge has been dramatically expanded by the addition of a large volume of appeals filed throughout 1998 due to the imposition of a six-month time limit for filing appeals to pre-1988 decisions. The consequence: the Tribunal faces an appeals volume that exceeds historical norms by a factor of four.

Another result of appeals system streamlining has been changes in the manner in which Board appeals officers deal with appeals. For example, OWA staff, Tribunal adjudicators and Board appeals resolution officers have all reported that AROs no longer take the initiative in seeking out medical evidence that may be lacking in order to justify a claim. Rather, they assume a more traditional neutral hearing officer role adjudicating on the basis of evidence and arguments produced by the litigants. At the same time, the Board has implemented an array of measures designed to enable a greater number of early resolutions of files before they move up to the appeals level.

These and other changes have enhanced the role of informed representation within the system, influenced the practices and procedures of these Offices and increased the burden on the representative to ensure that appropriate medical evidence is acquired and tendered. In addition, the exponential increase in the Tribunal's appeal case load suggests that the Offices may have a greater role in ensuring that appellants receive timely access to the Tribunal.

One of the objectives in the Board's new five year strategic plan is to make "fair and timely decisions that are right the first time." Given this goal and the imminent full implementation of the Board's new service delivery model, it is likely that changes at the Board will continue to require further adjustments or even parallel changes at the Offices.

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Operational Review Methodology

The operational review entailed the gathering of evidence through document reviews and interviews with managers and staff of each organization. We also spoke with institutional stakeholders and managers of other employer and worker advisory offices across the country. The objectives were to ascertain whether the services being provided by each office represented value for money based on measures of economy, efficiency and effectiveness, and whether the systems of control and management in place ensure value for money.

The assessment of management system effectiveness was based on a number of standards as determined by reference primarily to the Canadian Institute of Chartered Accountants *Criteria of Control* document, Directives of the Management Board of Cabinet, the OPS Quality Service framework and the ISO 9001 quality management standard. Given that most of the expenditures made by each office are in respect of salaries and wages (72 per cent and 77 per cent of the OEA and OWA budgets respectively), we looked closely at measures of staff effectiveness in delivering client services.

Based on these standards, the review team developed a series of questions that it pursued with each organization. The review team also designed and carried out a survey of other worker and employer advisory offices across Canada as a way of comparing measures of work load and performance for each office.

The findings presented below are those considered most germane to the process of gauging the effectiveness of service delivery and the suitability of the control systems in place at each Office. While the findings are presented as discrete observations in each of the major decision-making systems employed by these organizations, there are obvious interrelationships between and among the separate areas of management.

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Operational Findings--Office of the Employer Adviser

Profile of the OEA

The OEA has an operating budget of $2.875 million that includes a salary and wage allocation of $2.263 million and direct operating expenditures of $0.612 million. The OEA provides representation, education and consulting services through a regionally-based service delivery model. Four employer specialists are located in the GTA and 12 specialists are located in 9 other centres across the province. The specialists are highly mobile, commonly working out of their homes and from workstations at Ministry of Labour regional offices. The OEA has invested considerable financial and time resources in a new information technology system to enable this service delivery structure.

The provision of advice has largely been centralized in a Toronto call centre, in which four intake advisers respond to the majority of employer requests for information and advice on WSIB matters. Head office activities involve two program analysts, six administrative support staff, one education specialist and three management positions. A brief review of key OEA activity data fills out this profile of the organization.

In each of the past two years, the OEA has averaged roughly 700 representations (involving some 200 hearings), 300 file closures, 3,100 instances of advice and information, and 6,000 participants in education seminars and workshops. The OEA has recently undertaken to provide on-site consulting to small employers and, as of September of this year, had assisted 214 employers in this manner. The OEA delivered 216 education sessions in 1997/98 and for the first six months of this year has carried out 169 sessions. We note that current volumes of representation services are notably below those of 1996/97, reflecting in large measure the impact of the change in mandate and to a lesser extent the impact of the reorganization that reduced the number of employer specialist positions from 21 to 16.

The OEA provides advice on issues of entitlement (36 per cent), assessment (23 per cent), and return to work (19 per cent). The OEA's representation services are primarily focused on issues of entitlement (64 per cent) and assessment (25 per cent).

In terms of effort, representations account for 28 per cent of staff resources, followed by advice (15.6 per cent), travel (13.4 per cent), administration (12.6 per cent), education/workshops (11.8 per cent), communications development (6.9 per cent) and program support (6.3 per cent). The remaining time is allocated to consulting services and staff development.

The OEA's client profile, as of March 1998, indicates that service to small employers (those with fewer than 100 employees) accounted for 68 per cent of the OEA's activities while large employers attract 32 per cent of service time (excluding time expended on delivering education programs). Data for the first six months of 98/99 indicate a further increase in the level of effort directed at small employers.

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Finding No. 6 Service Delivery

The OEA provides a valued service and has been challenged to re-establish its market and build demand. While the Office has made concerted efforts to raise awareness of OEA services within the small business community and to provide a broader range of services, it must raise service levels and further reduce its administrative costs to ensure value for money.

As noted in the Functional Review findings, the changes to the OEA's statutory mandate limited its capacity to represent large employers, which at the time constituted a significant proportion of its established client base. With this legislative change, the OEA was effectively challenged to rebuild its business. In response to this challenge and to budgetary pressures, the OEA restructured and re-organized its service delivery in 1997. The service model pared administration and centralized the provision of routine advice, thereby freeing regionally-based specialists to focus on representation, education and consulting services--based on the view of OEA management that these services add the most value to employers.

The underlying assumption supporting this model is that the work of specialists is best delivered regionally and in person. It also assumes that there is a steady flow of work in each region that will keep the specialists busy providing service. Insufficient time has elapsed to enable us to draw a firm conclusion as to the effectiveness of this model, but there is a need to continually test the validity of these assumptions in light of actual experience.

The call center that the OEA established as part of the reorganization seems appropriate given the stated need for providing just in time information to small employers. As with regional demand for specialists, it is important to ensure that the volume of calls warrants the number of staff dedicated to this service and that service quality is actively monitored. We note that the OEA has averaged 3,100 instances of advice per year over the past 18 months, resulting from roughly 500 calls per month or 5 calls per day per advisor.

The OEA has worked diligently to establish a meaningful presence among small business, and has broadened the range of services it offers. However, its representation activity is down from previous years. Currently the OEA represents employers in only a small fraction of the appeals disposed of by the Board--in 1997, the OEA represented employers in 95 of over 15,000 appeals. Representation before the Tribunal has been more substantial and consistent over time, at about four per cent of total appeals in which employers were involved. The OEA averaged 220 post-operating (Board or Tribunal) decisions in each of the past two years or 13 per employer specialist per year.

OEA data indicate that its volume of activity associated with representation is also down: some 1000 full representations (action on a file that resulted in a range of resolutions) have been carried out over the past 18 months resulting in the closure of 400 files, down from roughly 1600 instances of advice and representation in 1996/97, when it closed 1157 files. The decline in activity is attributable in part to the impact of the mandate change and also reflects the reduced size of OEA's work force.

In response, the OEA has made concerted efforts to reach a greater number of employers through the provision of education and information services. Over each of the past three years, the OEA has attracted some 6,200 participants to some 200 sessions per year. Although the OEA has established an education

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In response, the OEA has made concerted efforts to reach a greater number of employers through the provision of education and information services. Over each of the past three years, the OEA has attracted some 6,200 participants to some 200 sessions per year. Although the OEA has established an education target of reaching 6,000 employers each year, the actual number of distinct employers participating is likely to be lower, since the OEA's tracking measures only the number of participants each year and not the actual number of distinct employers represented at sessions.

Management has recognized that, given its limited reach and size, the OEA must leverage its resources to be effective. In this regard, the OEA has sought to establish partnerships in the education area with a number of employer organizations including the Ontario and local Chambers of Commerce, the Human Resources Professionals Association of Ontario, the Canadian Federation of Independent Business and the Employers' Advocacy Council. These efforts have been aimed at raising both the profile of the OEA in the employer community and the value-to-work ratio of its field specialists, that is, ensuring that specialists spend their time delivering sessions rather than organizing them. More recently, the OEA has mounted workshops in cooperation with the Industrial Accident Prevention Association. These efforts have met with some success, but a more extensive network of effective partnerships is necessary to enable the OEA to achieve its goals.

As noted in the Functional Review, the education services provided by the OEA do not sufficiently attract small business owners or their managers. Small businesses simply cannot afford the time commitments involved in attending full- or half-day sessions. To meet the education needs of the small employer, the OEA should consider strategies that would make training more accessible to the small business owner/manager and meet their stated preference for "just-in-time" services. In this context, Internet/web and CD-Rom-based modules may prove effective in reaching small employers, especially when this service is promoted through trade associations and the Board. Several small employers with whom we met agreed with this suggestion.

Some of our concerns about the shift to on-site consulting were noted in the Functional Review. This activity extends beyond the OEA's traditional focus on claims management and questions arise as to whether this activity represents a core competence of the OEA, whose field staff are generalists with expertise in workplace insurance, and whether it overlaps with the activities of the Safe Workplace Associations and the private sector. In addition, the efficacy of providing a service to only a very small percentage of the 170,000 small employers when all employers effectively pay for the service is questionable, even though OEA clients indicate their satisfaction with the service. Even if the OEA were able to meet its target of 800 consultations for this year, this would result in service only to one-half of one per cent of the OEA's market.

As the foregoing suggests, the OEA has been and continues to be a business in transition as management strives to meet the challenge of increasing its penetration of the small business market and establishing the OEA as a service provider of choice. The OEA is not starting from square one--it has a solid presence in Windsor, for example, but is not well-known in the small business communities in the north and east.

It is the reviewers' observation that, at present levels of demand, the OEA is operating below capacity. Moreover, at present levels of demand, the cost of service provision is high. Based on its current budget and service volumes (6,000 education, 3,100 pieces of advice, and 250 formal representations), assuming an equal allocation of resources across core businesses, we note that the cost of service delivery amounts to $167 per education participant, $322 per advisory service, and $4,000 per representation. Higher levels of demand will, of course, lower the cost of service.

It should be noted in this connection that a recent change in the Board's practice is likely to provide a partial remedy to the visibility challenge faced by the OEA. As of September, 1998, the Board now advises employers in receipt of a notice of an adverse Board decision that, among the range of assistance available to employers, smaller employers have the option of consulting the OEA. We have found that, in most Canadian jurisdictions, the Board presents the primary vehicle in raising the recognition of the existence of advisory services.

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Finding No. 7 Planning

The system of planning used by the OEA conforms to current requirements. More effective targeting of internal resources and better balancing of work volumes can be achieved by adopting more formal and participative planning processes and by undertaking more regular reviews of organizational performance.

As discussed above, ministries and schedule 1 agencies are now required to develop business plans as part of the government's allocations process. The business planning process has become a fundamental element of the government's public accountability system. Business plans are required to outline the mission/vision of the organization, to define core businesses/activities, to establish key measures of performance and set specific targets for achievement (geared to effectiveness, efficiency and customer service), to describe the major business drivers that influence the work of the organization and to define the strategies that the organization plans to follow to meet the needs of its clients or constituency. The OEA's plans generally conform with these requirements.

In examining the OEA's processes for strategic and operational planning, the review team observed the use of informal processes that did not actively involve staff. OEA management noted that the nature of the changes that had been effected over the past 2 years did not allow for staff's active involvement, but that they hope to involve staff to a greater extent in the future. While informal planning processes can work well in small organizations, given the nature of the challenges facing the OEA, the organization would benefit from the adoption of more formal and participative planning processes.

The review team also noted that the OEA's most recent strategic plan was dated 1996/97. While annual strategic plans may not be warranted, the Office would likely benefit from undertaking strategic planning every two years. This would allow for the regular validation of the major assumptions upon which their plans are based and enhance the organization's ability to add as much value to the system and its clients as possible. We note that the OEA has made a considerable effort to add value as an outcome of its service portfolio and support the use of this driver. We believe that the value of OEA services should also be assessed from the perspective of the system.

In broadening its service portfolio to add client value, the OEA now finds itself managing a considerable range of businesses--a call centre, a consultancy, a representation service, a training agency and perhaps, in time, a web-based business. With this range of services on offer, there would seem to be a need to adopt a formal scanning network that regularly gathers information on issues which could have an influence on each of these distinct activities. In addition, each of these businesses offers the opportunity to identify the bench marks that would enable the OEA to assess its service delivery.

Finally, the reviewers observe that there would be long-term organizational advantages to a reconsideration of the OEA's mission and mandate statement. In particular, consideration could be given to a vision of the OEA that includes reference to a more central role in serving the system and to becoming the service provider of choice for small business.

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Finding No. 8 Quality Management

The OEA demonstrates a strong desire and commitment to deliver quality services and has take many positive steps to improve service quality. Consistency in internal practices, service delivery and service quality are important elements of a quality management system that OEA should work towards.

The OEA has been an active participant in the Ministry of Labour program to implement the OPS Quality Service framework. This framework encompasses the development and use of quality service plans and standards, the identification of service priorities and key business processes, the measurement and evaluation of performance, the assessment of progress toward continuous improvement using customer feedback, and the use of external benchmarks to gauge service quality.

The OEA has in place a number of procedures and protocols that support its quality service commitments and that serve as a useful platform in developing a more comprehensive program. Further, OEA management is actively working to clarify quality standards associated with core business activities and plans to monitor conformity with these requirements. These efforts will contribute to service improvements across the organization.

We note that the OEA has an established standard for resolving requests for advice within 72 hours of receipt of a service request. Speed of response is an important indicator of service quality, as employer clients have indicated. In a number of our discussions with OEA clients, several issues were raised about the availability of employer specialists to respond effectively to client inquiries. These concerns arise when specialists are not able to respond to sometimes immediate requirements for information and advice. Some clients noted their reluctance to use OEA's call centre, especially when they have an effective working relationship with the local specialist. This concern bears further examination, particularly given the other demands on specialist time, such as the conduct of hearings and the delivery of education programs, that make them unavailable for days at a time, especially in the north. We concur that availability and response time measures are important for the OEA service quality and believe that the OEA should develop the capacity to track their performance against these standards.

In our discussions with the OEA concerning its quality program, we raised a number of additional actions that the OEA could take to better gauge and improve service quality. These included: monitoring/recording of telephone advice; using test cases in each region to gauge the consistency of advice and issue analysis; formalizing merit review procedures; greater use of standard forms, letters and prepared responses; more random reviews of files and representation activities; and regular assessments of conformity with procedures and standards.

We also note that the OEA has carried out service quality training for all staff and has actively sought feedback from clients following education sessions and through structured focus groups. These efforts are of value and should be continued. With respect to client feedback, we believe that the OEA's current efforts would be enhanced by capturing more real time data that informs management and staff when quality commitments are not being or are not likely to be met.

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Finding No. 9 Performance Management

The OEA is in the process of implementing a performance management program. Performance standards for managers and staff generally support corporate performance measures but would be improved with the delineation of quality standards to govern core business activities and more even distribution of work across the organization.

Over the past two years, the OPS has placed considerable emphasis on the development and use of performance measures and contracts as core elements of internal accountability. This has been guided in part by the emphasis on business planning and results-based management. The OEA has recently put in place a performance management program to ensure alignment between the directions established in its business plan and the activities of managers and staff across the organization. The OEA established a number of organizational targets in its 1998/99 business plan, including: increasing the relative percentage of small clients assisted to 95 per cent of total clients; holding 160 work shops involving 6,000 small employers; distributing 20,000 small business guides; conducting 800 work place consultations; and resolving 50 per cent of new cases through ADR.

These targets flow from broadly defined outcomes that the OEA is working toward--ensuring fair and equitable treatment for small employers, raising knowledge levels and self-reliance among small employers, reducing the severity of workplace injuries, contributing to overall system objectives and enabling efforts to lower the level of adversity in the system.

An important aspect of performance management is to encourage the organization to move forward and, over time, improve its capacity to provide service. In view of the finding that the OEA is operating below capacity and given the need for the OEA to broaden its reach and raise its aim if it is to give full effect to its mandate, more ambitious targets should be considered.

The service level targets could be based on the production levels of the above average producers within the organization and bench marked against the productivity of other employer advisory services in Canada. This would yield targets that are nearly double current productivity levels, taking the organization to some 450 to 500 formal representations per year, the provision of advice to some 15,000 employers annually and the provision of education services to 10,000 employers. These targets should, on the face of it, be attainable over time, particularly given improved access to key Board information and the recent amendment to the Board's notice of adverse decision which advises that the OEA is available to small employers.

An alternative to raising service levels is to establish more ambitious efficiency targets that, over time, could reduce service costs to $50 per employer educated, $5 per summary advice provided, and $2,000 per representation. At a more general level, the OEA should monitor its service provision costs as an important indicator of organizational efficiency and should work to further reduce its administrative expenses as a percentage of overall spending.

The OEA's internal performance management system requires managers, employer specialists and intake advisors to work towards specific activity requirements. As an example, employer specialists are

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The OEA's internal performance management system requires managers, employer specialists and intake advisors to work towards specific activity requirements. As an example, employer specialists are required to undertake a minimum of 65 activities, including 10 appeals/hearings, 10 workshops, 19 consultations, 6 community development initiatives and three presentations. The remaining 17 activities are to be negotiated between the specialist and their manager based on local, organizational and individual factors. Managers and the Director each have performance contracts that outline their respective commitments.

There is much to commend in the approach that management, in working with staff, has taken to formalize output requirements. There may be concern that the target of 10 formal representations per specialist is too low to maintain the competency necessary to be effective at the Tribunal or the Board. To enhance their utility, the representation standards should also distinguish between representations that are concluded without a hearing and those that require a hearing, and between Tribunal and Board proceedings. The performance contracts for the two manager positions, while quite detailed, would be strengthened by the inclusion of targets related to planning and strategy, policy and program development, financial planning, labour relations, and service quality.

In reviewing production data, we noted considerable disparities in the volumes of work performed across the organization. Several areas of the province are extremely busy, while others are not. Management has sought to accommodate the busier specialists through work sharing arrangements, but it may also be appropriate to assess how representation work is allocated across the organization. While we appreciate the importance that employers place on having regular access to a local representative, the sufficiency of regional demand should be taken into account in determining the appropriateness of regional service provision.

We understand that management is in the process of developing quality-related performance measures for the organization and to supplement activity targets for specialists. This is an important addition to the performance management program and should be finalized as soon as possible. Once finalized, the OEA would likely benefit from communicating these quality standards to its clients and making adjustments as appropriate based on client feedback.

It is noted, finally, that a particularly effective way in which to measure the OEA's performance or impact would be to examine assessment data to determine whether or not OEA intervention has positively influenced client employer behaviour. The availability of such measures will, of course, depend upon the extent of cooperation between the Board and the OEA.

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Operational Findings--Office of the Worker Adviser

Profile of the OWA

The OWA has an operating budget of $8.57 million that includes salaries and wages amounting to $6.36 million, ODOE of $0.96 million and $1.245 million that is disbursed as transfer payments to the Ontario Federation of Labour, the Provincial Building and Construction Trades Council of Ontario and to a number of injured worker groups.

The OWA provides advisory and representation services through 15 regional offices in four regions of Ontario with administrative centers in London, Sudbury, Toronto and Thunder Bay. The OWA has an approved staff complement of 107 full time positions, 66 which are considered front line service

providers, including 51 Worker Advisors and 15 Intake Counselors. These front line staff are assisted by 36 administrative support and head office staff and five managers. It should be noted that a substantial proportion of the administrative staff (some 21) located in the regional offices provide front services as well, including reception duties and the provision of initial advice.

The bulk of head office activities is carried out by Central Client Support Services and includes case research, the coordination and provision of internal and external education services, information technology support and community development (including the administration of transfer payments). There is also a small administrative support function in the Director's Office.

OWA workloads over the past three years have averaged about 20,000 new requests per year for assistance. In 1997/98, this demand came from roughly 11,000 injured workers. The vast majority of requests, normally between 85 and 90 per cent, are dealt with through the provision of summary advice and written information, including issue-specific self-help kits. In 1997/98, roughly nine per cent of injured workers had their files formally represented by the OWA, either through early intervention, merit reviews and/or full representation.

The OWA also provides education services geared to local communities, carries out clinics for injured workers in cities and towns that do not have local offices and provides assistance to others in the injured worker community in support of its self-reliance objective. This support includes the distribution of written materials and consultations with injured worker representatives.

The current volumes of representation and advice provided by the OWA are considerably lower than the levels of demand experienced by the Office in the early to mid-1990s. New requests reached a peak at roughly 31,000 in 1994/95 and the number of decisions that are facilitated by the OWA is now just over one-half the level of decisions generated in 1994/95, in absolute terms and on a per worker adviser basis.

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Finding No. 10 **Service Delivery**

The OWA provides a critical service to many injured workers. The OWA has the internal capacity to serve a greater number of vulnerable workers and to enhance system adjudicative processes, and to this end should review a number of its key practices and resource allocation decisions.

The OWA has been operating with its current structure for many years. Most injured workers who come to the OWA will have their issue dealt with by an Intake Counselor or support staff. Where the injured worker is deemed to be able to carry his or her own claim forward, the OWA provides summary advice and written information that the worker can refer to in pursuing the claim. In those instances where the injured worker is not in a position to carry forward his or her claim effectively and without assistance, the OWA will assume the role of advocate on the worker's behalf

This system of managing demand has worked well for the OWA and was an effective instrument in dealing with the extraordinary volume of claimants who sought its assistance through the early and mid-1990s. However, work volumes have declined over the past four years and, as a result, the review providers, including 51 Worker Advisors and 15 Intake Counselors. These front line staff are assisted by 36 administrative support and head office staff and five managers. It should be noted that a substantial proportion of the administrative staff (some 21) located in the regional offices provide front services as well, including reception duties and the provision of initial advice.

The bulk of head office activities is carried out by Central Client Support Services and includes case research, the coordination and provision of internal and external education services, information technology support and community development (including the administration of transfer payments). There is also a small administrative support function in the Director's Office.

OWA workloads over the past three years have averaged about 20,000 new requests per year for assistance. In 1997/98, this demand came from roughly 11,000 injured workers. The vast majority of requests, normally between 85 and 90 per cent, are dealt with through the provision of summary advice and written information, including issue-specific self-help kits. In 1997/98, roughly nine per cent of injured workers had their files formally represented by the OWA, either through early intervention, merit reviews and/or full representation.

The OWA also provides education services geared to local communities, carries out clinics for injured workers in cities and towns that do not have local offices and provides assistance to others in the injured worker community in support of its self-reliance objective. This support includes the distribution of written materials and consultations with injured worker representatives.

The current volumes of representation and advice provided by the OWA are considerably lower than the levels of demand experienced by the Office in the early to mid-1990s. New requests reached a peak at roughly 31,000 in 1994/95 and the number of decisions that are facilitated by the OWA is now just over one-half the level of decisions generated in 1994/95, in absolute terms and on a per worker adviser basis.

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Finding No. 10	**Service Delivery**

The OWA provides a critical service to many injured workers. The OWA has the internal capacity to serve a greater number of vulnerable workers and to enhance system adjudicative processes, and to this end should review a number of its key practices and resource allocation decisions.

The OWA has been operating with its current structure for many years. Most injured workers who come to the OWA will have their issue dealt with by an Intake Counselor or support staff. Where the injured worker is deemed to be able to carry his or her own claim forward, the OWA provides summary advice and written information that the worker can refer to in pursuing the claim. In those instances where the injured worker is not in a position to carry forward his or her claim effectively and without assistance, the OWA will assume the role of advocate on the worker's behalf.

This system of managing demand has worked well for the OWA and was an effective instrument in dealing with the extraordinary volume of claimants who sought its assistance through the early and mid-1990s. However, work volumes have declined over the past four years and, as a result, the review team believes that it would be appropriate for the OWA to assess a number of the approaches it has used to manage the demand for its services.

OWA strategies to manage demand include case selection and merit reviews, the preparation and distribution of detailed self-help kits and the provision of internal advocacy resources and advice to others in the community. These are supported by the establishment of an ambitious self-reliance objective. At the time these strategies were implemented, the OWA was not in a position to monitor the impact of these decisions on those who were encouraged to carry forward their own cases.

While many of these strategies may still be appropriate, given that the organization's staffing levels have not changed in parallel with the decline in service demand and decision volumes, the review team believes that the OWA should examine alternative approaches to determine how it can be of most assistance to injured workers in resolving their claims and how it can most effectively support system improvements.

In particular, research should be undertaken to understand what has happened to those claimants whose service requests were addressed through the provision of summary advice and supporting materials. One question that arises with respect to cases that the OWA has elected not to carry is whether or not that determination has entailed avoidable system costs where these workers have gone to the Board or Tribunal without representation. In a nutshell, the challenge is to determine where the OWA should best invest its resources--in providing summary advice and support to community resources or in representing a greater number of injured workers.

Similarly, questions have been raised as to the appropriate degree of emphasis on outreach and education, and whether or not these services are generating sufficient value to warrant their continuance. Finally, questions arise as to the appropriate allocation of staff resources within the organization, and whether or not the dedication of 66 of 107 staff to front line positions represents the optimal blend of service provision and administrative support.

Answers to these issues are critical if the OWA's effectiveness within and value to the system is to be maximized. In assessing whether OWA services represent value, we have given due consideration to the testimony of clients and stakeholders in the Functional Review. A second measure of value is the cost of providing these services. This measure of value is revealing where comparable data from other service providers is broadly available or as an indicator of cost effectiveness when tracked internally over time.

Based on 1997/98 data, the OWA provided some 18,500 pieces of summary advice (to 9,600 injured workers), and will eventually provide some 1,000 full representations and 500 merit reviews as these claims work their way through the system. Assuming that 70 per cent of the OWA's $7.2 million allocation is dedicated to providing representation services (51 of 66 service personnel carry out representations), roughly $5.0 million is expended on 1000 formal representations, or $5,000 per representation. Factoring in 500 merit reviews annually, at 10 per cent of a full representation file, lowers the cost of each representation by $200. Allocating the remaining $2.2 million to the provision of summary advice results in service cost of $108 per issue, or $220 per injured worker.

Allocating $5 million of OWA expenditures against its internal measure of workload for 1997 /98 results in a file cost of $1,374, or against the number of decisions that OWA generates results in service provision costs of $1,535 per decision. These service costs are currently some 40 to 50 per cent higher that they were during the period of peak demand for OWA services. We recognize that this analysis does not value an important array of OWA activities, such as maintaining self help kits, training materials, resource centers, the CMS and other technology support, or the research and case consultations performed by the Central Services Unit. These activities probably add value but they ultimately support the provision of summary advice and formal representation on files.

Although it is difficult to reach a definitive conclusion as to whether or not OWA services represent the fullest value for money, this analysis combined with an assessment of work distribution patterns in the organization leads to the conclusion that there is room for improvement in service delivery. The OWA has the capacity to assist more vulnerable workers and to add more value to the system.

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Finding No. 11 **Planning**

The adoption of more formal and participative planning processes will enable the OWA to serve more effectively the most vulnerable injured workers and the needs of the system, build staff support and give full effect to its statutory mandate.

The OWA has developed business plans over the past three years that conform to the requirements of Management Board. These plans generally outline the directions and strategies that the OWA is pursuing, define core businesses and establish performance measures and targets. The OWA's corporate business plan is developed by the Director in consultation with his management team and this in turn is used to build regional plans and performance contracts for managers and staff.

The review team notes that the OWA has in the past demonstrated an ability to plan when confronting major challenges. For example, its strategic plan in 1994 resulted in considerable improvements in file management to address the persistent backlog of cases. More recently, the OWA has reviewed its internal processes and made changes to ensure that the six month time limits for appeal were not missed by any of the tens of thousands of clients on its database.

A number of factors suggest that the OWA should increase its planning capacity and use more formal and participative processes not only to meet crises as they arise but to enable more effective and efficient disposition of resources to achieve its new mandate.

Planning is a critical tool in addressing the formidable challenges of targeting the most vulnerable injured workers, those who are unorganized and regularly exposed to unsafe practices in the workplace. At present, the OWA employs an array of methods for reaching these workers as part of its outreach program into communities across the province, but the variable degree of success in building this network, the apparent lack of coordination and evidence of significant investment of staff time for marginal return in terms of services provided argue for more effective planning.

More formal planning would also provide the mechanism to address issues of work distribution across the organization. The OWA currently carries out periodic reviews of its internal resource allocation and was in the process of doing so at the time of this review. It was noted that a number of OWA offices experiencing backlogs were below full complement while others were at or above complement and were not facing equivalent levels of demand. This is a significant service quality issue that requires planning to ensure a better matching of positions to demand.

A formal planning process that involves the participation of staff will also enable the OWA to shape a long term vision for the organization based on its new mandate and that is supported by staff. This would be particularly valuable given the impact on staff morale of the changes documented at the outset of this Operational Review.

In addition, it is noted that the administration of the transfer payment program, particularly as it affects injured worker group recipients scattered across the province, would benefit from greater planning and coordination.

In light of the above, we believe that service delivery and organizational effectiveness would improve if the OWA were to augment its current planning capacity. Planning processes do not need to be elaborate or involve the use of external consultants to be effective but should involve a core of staff and managers who have a clear understanding of their roles and responsibilities in this area. The resulting planning system could also be supported by a number of internal scanning teams that gather information on critical issues for the organization. We note that recent changes have resulted in a reduction of corporate resources assigned to business planning and review, with the result that planning responsibilities are concentrated primarily in the Director, who currently performs the duties of three or more positions within the organization.

Finally, it is worth observing that the OWA's pursuit of external activities is in part driven by the need for front line staff to vary their routines, as these positions are stressful and can often result in burn-out. Many OWA staff noted their interest in meeting on a more regular basis with their colleagues in other regions. We concur that, rather than mandating outreach activities, the organization should encourage intake counselors and worker advisers to take time for professional development and to network with peers, especially on issues related to service improvements and planning.

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Finding No. 12 Quality Management

The OWA demonstrates a strong desire and commitment to deliver quality services and has taken many positive steps to improve service quality. The adoption of measures to improve consistency in internal practices and service provision are part of a service quality management system that OWA recognizes and is working toward.

The OWA has an active quality program in place that in a number of respects is quite advanced within the context of public sector organizations. Central to the OWA's program has been the development of work procedures and protocols to ensure a greater degree of consistency in file management and to govern the behavior of staff in carrying out their responsibilities. The OWA has also established quantitative standards for service staff and is actively working to formalize internal standards for service quality. The OWA has also been an active participant in the Ministry of Labour's program to implement the OPS quality service initiative.

Responsibility for the OWA's quality service improvements resides with one of its regional managers who has considerable experience as a worker adviser and a genuine commitment to service quality. This individual has been instrumental in documenting and improving internal procedures and is available to performed by the Central Services Unit. These activities probably add value but they ultimately support the provision of summary advice and formal representation on files.

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Responsibility for the OWA's quality service improvements resides with one of its regional managers who has considerable experience as a worker adviser and a genuine commitment to service quality. This individual has been instrumental in documenting and improving internal procedures and is available to advise all staff members responsible for carrying out these procedures. This centralization of responsibility ensures greater consistency in advice to staff and allows the manager to gauge the understanding about and the adequacy of these procedures across the organization.

The OWA's commitment to quality is also evidenced by its use of stakeholder surveys, including clients and MPP offices, about their experience with the OWA. The use of surveys is an important source of information about service quality and could be extended to gauge the views of other institutional players in the system.

There appears to be an effective working relationship between management and the organization's union executive, which aids in the OWA's management of service quality. This forum serves as a window of opportunity for staff to provide feedback to OWA management and to offer suggestions for improvement. While acknowledging the value of this forum, we believe that it is incumbent on management to canvass staff directly for input and to gauge their satisfaction with the organization. Given the nature of the OWA's operation, ensuring the effective contributions of all staff should be a critical focus of management.

The nature of advocacy service, the people that are attracted to advocacy positions and the regional structure of the OWA all pose special challenges for the OWA's quality service program. In this light, we believe that the OWA should consider a number of other suggestions to strengthen its quality management program.

The efforts to develop internal standards and processes are important and should be supported by a commitment to ensure adherence to these processes. During our review, we were informed of a number of issues of non-compliance with internal procedures relating to intake, merit reviews, and the carrying out of case-related research.

We also support more management involvement and visibility in the OWA's work flow. For example, managers should review a greater number of merit letters before they are sent to workers whose files will no longer be carried by the OWA, and managers should review a significantly greater number of the active files carried by advisers and intake counselors than are reviewed at present. Measures such as these will reinforce both the quality message within the OWA and management's responsibility for and legitimate role in ensuring the quality of the work performed by the organization.

The OWA's emphasis on service quality would also benefit by periodic training of managers and staff on quality system requirements, carrying out regular audits of conformity with procedures and protocols, and greater efforts to ensure consistent internal management practices. The circulation of best practices is helpful in this regard but does not constitute sufficient internal direction on sensitive matters for managers or the organization as a whole.

To raise the effectiveness of service quality efforts, the organization needs to discuss and agree on those critical few measures that best reflect issues of productivity and service quality. Staff with whom we met typically expressed concerns about the extensive data entry requirements of the CMS (the OWA's case management system) and the time burdens associated with the need to keep dockets up to date. This concern reinforces the need to ensure that the OWA collects only the data that is necessary to accurately gauge the organization's ability to provide quality services and its ability to effectively manage production.

The review team believes that OWA quality metrics could include: the number of files closed; the number of decisions reached at the operating and post operating levels; the number of injured workers who receive full representation as a percentage of incoming demand; the average length of time it takes to close a file where the issue is resolved; the number and quality of formal representations made; the number of injured workers assisted through summary advice and the quality of advice given; and the fate of injured workers' claims that are addressed through summary advice.

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Finding No. 13 Performance Management

The OWA has developed a series of organizational performance measures as part of its business planning process and has effectively devolved these measures to staff through individual performance contracts. The efforts made by the OWA to improve its performance management system should be augmented by standards related to service quality and supported by semi-annual reviews of corporate and individual performance as part of business planning and quality management commitments.

Management Board, as part of its business planning requirements, has identified the need for management to translate business plan objectives into specific performance contracts for managers and professional staff. The OWA has established performance standards as part of its business plan and as a management tool to gauge productivity among its advisers and counselors. As noted in the quality management section, efforts to define quality standards will support numeric targets for the organization and individual staff.

The OWA's business plan establishes targets in the areas of self reliance, effective dispute resolution and client satisfaction. Specific targets are established for demand and the provision of summary advice; the number of clinics, education sessions and alternative sessions carried out and the number of participants in these forums; and the proportion of cases dealt with by ADR or early resolution to total cases and the proportion of cases diverted from appeals to total cases closed.

Minimum performance standards for advisers require 60 active full representation files, a minimum of 50 WSIB/WSIAT objection forms, 20 operating level decisions, 40 appeal level decisions, with 35 per cent of these being resolved without a hearing, 35 post operating decisions, closing 35 files, 20 days of non-case work in support of the OWA's business plan and assisting in the provision of summary advice as assigned. Minimum requirements for intake counselors include concluding all new requests within 72 hours, responding to a maximum 125 new requests per month, complete service by summary advice and assistance provided on 75 per cent of new requests, submission of a minimum of 30 operating level decisions and 12 appeal level decisions and 20 days non-case work. Both standards vary slightly depending upon experience.

The standards noted above should ensure a fair distribution of work and, along with the OWA's quality program, promote more consistent levels of service across the organization.

The review team noted widely varying rates of file closures and post-operating decisions among worker advisers and considerable differences in file closures and operating level decisions among intake counselors. Also of note were considerable degrees of variance among offices in terms of files receiving merit reviews, files being taken on as full representation, and file closures as percentages of new

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In conclusion, we support the OWA's efforts to strengthen its performance and quality management programs and believe that considerable improvements in service levels could result. We also believe that more emphasis could be placed on system improvement objectives, with targets such as adding value to the system and reducing the average length of time it takes to resolve a compensation claim as it moves through the system. We recognize that such objectives are not within the sole responsibility of the OWA and their attainment would require the active involvement of all players in the system.

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Finding No. 14 Transfer Payments Administration

The OWA has recently instituted changes to its administration of the transfer payment programs to improve accountability for the monies distributed. The effectiveness of the OWA's administration of the programs could be further enhanced by undertaking regular reviews of the effectiveness and efficiency of these transfers and by testing the value of the transfers against external standards.

The OWA manages a number of transfer payments aimed at promoting self-reliance among injured workers and their representatives. For the current fiscal year, these transfers included $650,000 to the Ontario Federation of Labour and $225,000 to the Provincial Construction and Building Trades Council of Ontario for the training of worker representatives, and $370,000 to encourage self-support among some 20 injured worker organizations across Ontario. As noted earlier, the focus of the review was on the administration of these transfers and not on the transfers themselves.

Our review indicated that the OWA has recently undertaken to clarify the expectations of results from these transfers and is currently developing a number of outcome-based performance measures that will be built into future funding contracts to drive and measure transfer payment effectiveness. The OWA has also recently revised its funding formula for local injured worker community groups to better rationalize the distribution of these monies.

We find that the transfer payment program would benefit from more active management and review of recipient performance. In this regard, it is important for OWA to regularly scrutinize the information that is submitted by transfer recipients and appropriate to undertake periodic reviews to test the overall effectiveness of each program. Given that funding for the OFL program has been in place for more than six years, we believe that some form of review should have been undertaken to validate the effectiveness of the OFL's training strategy over other approaches. We were also looking for evidence of continuous improvement in the OFL program given the length of time that it has been in operation.

While it is admirable to assist the formation of community-based injured worker support groups across the province, the OWA's principal challenge has been to effectively leverage small amounts of money to these volunteer support groups while ensuring appropriate accountability. Greater accountability could be achieved in part by ensuring more effective communication between the funding program coordinator and regional advisory staff. We also note that the OWA's internal accountability framework, if finalized, would provide an internal reference to guide the transfer program and its administrative practices. The OWA is working to develop clearer accountability frameworks for each transfer recipient along with outcome based measures of performance which should close some of the current accountability gaps.

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IV. Recommendations

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1. The OEA and the OWA should be continued, subject to a review by January 1, 2002 in light of the needs of Ontario's workplace safety and insurance system at that point in time.

This Report has concluded that the case for continuing the OWA is compelling. The OWA plays a number of important roles that benefit injured workers, the workplace safety and insurance system and others:

- Providing effective, responsible and disinterested advice and representation to the most vulnerable injured workers;
- Contributing to the more effective management of cases through the system;
- Providing an avenue of redress for workers who would otherwise turn to alternative sources of assistance such as MPPs, social agencies and the Ontario Ombudsman or take other less socially desirable courses of action;
- Submitting decisions to the test of the adjudicative process, thereby ensuring that adjudicators have the benefit of full evidence and argument and enabling corrections to the errors that are inevitable in a mass adjudication system.

The case for continuing the OEA is rather less clear, in part because the impact of the OEA is today comparatively more limited for reasons beyond the control of management. Assuming that the limitations can be addressed, there remains a legitimate role for an employer advisory and representation service:

- Providing effective, responsible and disinterested advice and representation to small businesses, which constitute the vast majority of registered employers, and which cannot easily afford to retain requests. Individual rates of productivity varied by a factor of three for file closures and by a factor of seven for decisions generated. OWA management noted a number of discrepancies in the assignment of closed files to individuals within each office and stated that considerable efforts are made to raise the production rates among below average producers.

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- Contributing to the more effective management of cases through the system;
- Providing a legitimate avenue through which employer interests can be represented within the framework of the current structure, thereby maintaining the "balance" in the system that employers seek;
- Submitting decisions to the test of the adjudicative process, thereby ensuring that adjudicators have the benefit of full evidence and argument and enabling corrections to the errors that are inevitable in a mass adjudication system.

Accordingly, it is recommended that both offices be continued. However, the Offices should be subject to review in three years. This is consistent with sound agency management principles, which require periodic scrutiny to assess effectiveness and conformity with statutory objectives. This qualification is also necessary in light of the significant service delivery objectives that the Board has set out in its recently published five year strategic plan, in light of which it may be justifiable to ask once again whether or not these agencies should be continued.

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2. The OWA should concentrate its resources on providing expert advisory and representation services to the most vulnerable injured workers and on enhancing the expeditious disposition of claims within the system.

The findings of this review suggest that, to fully realize its role in the workplace safety and insurance system and optimize its effectiveness, the OWA must achieve a greater focus on the client group prescribed in the *Act*. To do this the OWA should develop a capacity to define its "market", then devise and implement a strategy to ensure that it serves a larger proportion of the injured workers who need the assistance of worker advisers.

The strategy would likely be multi-faceted, entailing an outcomes-based review of current practices and activities such as allocation of resources, the merit review process, the use of summary advice to encourage self-reliance and outreach as well as an exploration of novel approaches. With respect to the latter, consideration could be given to consulting the Tribunal with a view to identifying a role for the OWA in expediting resolution of disputes and serving unrepresented appellants. There may well be a comparable role for the OWA in expediting some of the appeals before appeals resolution officers.

The OWA may also have a broader systemic role in early intervention, targeting in cooperation with the Board those claims that turn into the problem cases. This report has already commended the OWA's innovative partnership with Dofasco and other large employers in service of streamlining claims. This program should be extended, possibly in partnership with the OEA, which is, potentially at least, strategically positioned to build up clients for the program.

In addressing the shortcomings of the OWA's current education and outreach program, consideration could be given to extending, formalizing and structuring the OWA's referral network with community agencies, legal clinics, M.P.P offices and so forth. A formal referral protocol between the OWA and the Ontario Legal Aid Plan, for example, would not only be efficient but could be an important instrument for securing a safety net for the most vulnerable injured workers throughout the province.

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3. The OEA should concentrate its resources on providing expert advisory and representation services to small business and on enhancing the expeditious disposition of claims within the system.

The value of the OEA in the system is likely to remain open to question so long as the OEA serves a small proportion of its potential client base (however well it is serving those clients) and is, consequently, having less of an impact on the system than it might have. As such, the OEA must focus its resources on the activities that maximize its impact and on the clients most in need of assistance, small business.

The critical core activities, as most of the OEA's clients point out, are just-in-time advice and representation services. Small business clients require the information they need to manage a claim or an appeal situation when they need it from a source they feel they can trust. It is important for the OEA to develop a profile of what its small business clients need from advisory services and to mold its service delivery into a configuration that meets that need.

With respect to representation services, it must be recognized that the OEA is uniquely positioned to represent employer clients before the Board and the Tribunal. While other institutions in the system, notably the Safe Workplace Associations and the Board itself, are capable of providing health and safety consultation and education/information services, no other player in the system is competent or structurally positioned to undertake a representation role. It follows that, to fully realize its mandate, the OEA should concentrate on representation as a core business. And if it is to maintain its competency in representation and so optimize service to its clients, it has to do more representation work than it is currently doing.

In considering the OEA's representation role, it is important to recall that the OEA is a disinterested advocate mandated to serve the interests of both its clients and the employer-funded system within which it operates. This consideration will influence the types of representation roles the OEA takes on. For example, it seems rational from a system perspective that the OEA is in the business of testing the validity of claims, but less so that it is competing with the private sector in the business of challenging administrative decisions about allocating costs (assessments) with the goal of shifting costs away from the client employer to other employers.

The OEA should consult the Tribunal with respect to establishing a process that would confer on the OEA the ability to participate in appeals with significant implications for the insurance fund and in which the employer is not represented. In addition, the OEA as advocate has a potentially significant additional role to play in expediting the disposition of claims. For example, it could work with the OWA to streamline claims within individual employers, or with the OWA and the other institutions to facilitate alternative dispute resolution in a range of situations.

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the services of private sector providers in dealing with a complex system;

- Contributing to the more effective management of cases through the system;
- Providing a legitimate avenue through which employer interests can be represented within the framework of the current structure, thereby maintaining the "balance" in the system that employers seek;
- Submitting decisions to the test of the adjudicative process, thereby ensuring that adjudicators have the benefit of full evidence and argument and enabling corrections to the errors that are inevitable in a mass adjudication system.

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4. The OEA and the OWA should address the findings and implement the recommendations set out in this Report within 12 months.

The Directors should work with the Ministry of Labour to examine alternative delivery structures that will minimize the costs of administration and maximize the investment in front-line service.

In the interests of both clients and staff, OEA and OWA management should move quickly to address the findings and implement the recommendations of this Report. Quick action is particularly desirable from the perspective of staff, who have been required to weather patiently a protracted period of uncertainty.

Accordingly, it is recommended that the Office proceed with implementation within 12 months of the end of fiscal year 1998/99. To enhance implementation, it is further recommended that the Ministry consider providing for quarterly monitoring and reporting requirements in the memoranda of understanding between the Offices and the Ministry.

The focus of this report has been on enhancing the effectiveness and efficiency of the Offices within the existing delivery structures. However, the current delivery structure--two parallel organizations delivering comparable services regionally each with its own administration and case management support systems--imposes an unnecessary administrative burden. As noted in the operational review, administration accounts for a disproportionate amount of Office resources, resources that are not being used to deliver front-line service.

Accordingly, it is recommended that the directors of the Offices, in consultation with the Ministry, examine alternative delivery approaches that minimize administration and maximize service. The objective is to identify the approach that presents an optimal strategy for reducing administrative costs and enabling the organizations to focus on service delivery without compromising their independence from the Board and the Ministry and the perception that advisers are acting in the best interests of their clients. Consideration should be given, at a minimum, to varying degrees of administrative consolidation between the two organizations.

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5. The OEA and the OWA should be continued as agencies of the Ministry of Labour operating at arms' length from the Ministry and independently of the Workplace Safety and Insurance Board.

Mechanisms should be developed to enhance coordination among the Offices, the Board and the Ministry and to enhance the ability of the Offices to plan and act in light of the strategic objectives of the workplace safety and insurance system

It has been noted in this report that the structure of the relationship among the Offices, the Ministry and the Board presents a number of difficulties in terms of accountability and direction-setting. There are

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It has been noted in this report that the structure of the relationship among the Offices, the Ministry and the Board presents a number of difficulties in terms of accountability and direction-setting. There are alternatives to this structure, but they bring their own problems and the current structure does have certain advantages.

The current framework maintains the independence of the Offices from the Board, a matter that employers, workers and their representatives consider to be of the first importance. The arms' length status of the Offices as agencies of the Crown confers on them a degree of operational and substantive autonomy they require to more effectively meet the needs of the system that funds them. Finally, as providers of advocacy services, the Offices do not fit comfortably into a Ministry that enforces health and safety regulations and, as such, has a vested interest in maintaining the perception of neutrality and even-handedness.

The deficiencies noted earlier can largely be remedied by strengthening the framework that governs the relationship of these Offices to the other players in the system. What is envisaged is a formal process in which senior management representatives of the Offices, the Board, the Ministry and possibly the Tribunal are required to meet quarterly to get on the table key planning and directional issues. These meetings should provide an information and planning forum which would enable the Offices to develop business plans that are informed by a knowledge of what else is going on in the system.

Two steps must be taken to secure long-term institutional support for and senior level buy-in to this process. First, the Ministry, in consultation with the other institutions, should develop a charter that clearly sets out the objectives of the process, specifies the obligations of the parties to this process, describes the process itself and identifies the participants. Second, the charter should be embedded by reference in the memoranda of understanding between the Minister (and the Deputy Minister) and each of the agencies.

The process must serve to create a permanent, formal linkage among these agencies at a strategic level and to provide the basis for constructive partnerships at the operational level. At a minimum, the goal should be to ensure that the Offices have the type of information they need to be truly effective in the system and to minimize risk of overlap.

The benefits to the institutional partners are three-fold. First, the Board is provided a mechanism that will give it input on the activities of the agencies it funds. Second, the Ministry is better informed of the environment within which the agencies operate and thereby positioned to oversee more effectively the operations of the Offices and more accurately assess their business plans and funding requirements in light of both Ministry and Board strategic objectives. Third, the Offices are able to plan and to operationalize their plans on the basis of full information while maintaining the autonomy they require, and thereby realize their full potential within the system and for their clients.

The proposal builds on the substantial progress that has been made by the Ministry and the Board over the past three years in moving to a cohesive workplace health, safety and insurance system. The proposal would have the effect of drawing the claims and appeals side of the system into this vision of the coordinated system and, as such, should be seen as the next logically necessary step in "shifting the paradigm" and giving effect to the overall intent and purpose of the *Workplace Safety and Insurance Act*.

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6. **The Ministry of Labour should, within 12 months of the date of this Report, review the effectiveness and value of the programs through which the Ministry transfers funds to the Ontario Federation of Labour, to the Provincial Building and Construction Trades Council of Ontario and to injured worker groups.**

It has been noted in this report that the OWA administers a funding transfer under which $875,000 (1998-99) is transferred to the Ontario Federation of Labour and to the Provincial Building and Construction Trades Council of Ontario for purposes of training members of affiliated trade unions in workplace safety and insurance law and procedure with the objective of enabling these organizations to be self-reliant in this area. A further $370,000 is transferred to a network of injured worker groups for training and allied purposes.

The focus of this Report has been on the effectiveness of the OWA's administration of the programs rather than on the programs themselves. A review of the program is not within the mandate of this review. However, the reviewers conclude that, if the program is to be continued, a performance- and value-based review of the effectiveness of the program is warranted on several grounds, including the following:

- While the program has been under way for a considerable length of time (since 1991 for the OFL, since 1993 for the injured worker groups), no assessment of the efficacy of the program has yet been undertaken;
- As this Report has documented, the OWA has not exercised particularly rigorous oversight in relation to this program;
- As of the 1998-99 fiscal year, a portion of the transfers is funded directly out of the base funding provided to the OWA, a circumstance which has inevitably affected the service delivery capacity of the OWA; and,
- During the course of consultations a number of stakeholders raised concerns about aspects of the program which should be investigated.

In the event that the government continues to fund this program into the next fiscal year, the review of this transfer payment program should be concluded by the end of calendar year 1999 to ensure that the recipients have adequate notice of changes to the program, if any.

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Appendix A

Review Terms of Reference

The Office of the Worker Adviser and the Office of the Employer Adviser

Review under Section 176 of the *Workplace Safety and Insurance Act*

Terms of Reference

Background

The Office of the Worker Adviser (OWA) and the Office of the Employer Adviser (OEA) were created as part of the wide-ranging changes introduced into Ontario's workers' compensation system by Bill 101 in 1985. The offices functioned initially as branches of the Ministry of Labour and subsequently became arms' length agencies of the government. Under the amendments to the *Workers' Compensation Act* that came into force as the *Workplace Safety and Insurance Act, 1997*, the offices were continued with a mandate that was re-focused on education, advice and representation services to non-unionized workers (OWA) and primarily small employers (OEA).

Purpose of the Review

Section 176 of the *Workplace Safety and Insurance Act,* which continues the OWA and the OEA, provides that:

> Before January 1, 1999, the Ministry of Labour shall review the functions and operations of each office and shall determine whether there is a continuing need for the office.

The purpose of the Review is to enable the Ministry of Labour to make the determination required under the legislation in light of the Ministry's commitment to making Ontario's workplaces among the safest in the world.

Scope of the Review

There are two components to the Review:

The functional component includes an assessment of:

- The activities of each office and the services each provides in light of: the mandate prescribed in the *Act*; the needs of workers and employers; the changes underway across the workplace safety and insurance system; and the changing role of government and government agencies;
- The role of each office in Ontario's integrated occupational health and safety system, and the relationship of each office to the other institutions governing Ontario's workplace safety and insurance system-- in particular, to the Workplace Safety and Insurance Board, the Workplace Safety and Insurance Appeals Tribunal and the Ministry of Labour.

The operational component includes an outcomes-based assessment of:

- The effectiveness and efficiency of service delivery and the level of customer satisfaction; and
- The efficacy of the organizational, managerial and accountability systems in each office.

Methodology of the Review

The Review will be an independent review conducted by a senior civil servant who reports to the Deputy Minister of Labour.

The key elements of the review process comprise:

- A functional and operational review of the OEA and OWA, including a review of office systems and processes and interviews with OEA and OWA management and staff
- Consultations and interviews with senior staff of the other institutions governing Ontario's workplace safety and insurance system, in particular, the Workplace Safety and Insurance Board, the Workplace Safety and Insurance Appeals Tribunal, the Safe Workplace Associations and the Ministry of Labour.
- Focused consultations with associations representing employer interests and worker interests, including organized labour;
- The preparation of a written report containing analysis and recommendations.

Deliverables and Time Frame

The review and the consultations will take place during the period August to October, 1998.

A Report will be tabled with the Deputy Minister of Labour on or before December 15, 1998.

August, 1998

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Appendix B

Consultation Questions

Consultation Participants

Consultation Questions

1. Does your organization and its membership make use of OEA/OWA services? Can you describe your use of these services?
2. What services provided by the OEA/OWA are the most valuable to your organization, to its membership and to workers in general? Which services are least useful, and why?
3. In your view, does the OEA/OWA provide these services in an effective manner? What are the strengths? The weaknesses?
4. What can be improved?

5. From the point of view of your organization, are there alternative, more effective means of providing these services?
6. Are there services that the OEA/OWA should be providing that it does not now provide?
7. What do you think should be the key roles and priorities of the OEA/OWA in Ontario's workplace health and safety system?

Employer Participants

Employer Associations:

Alliance of Manufacturers & Exporters Canada
Ian Howcroft
Maria Marchese

Automotive Parts Manufacturing Association
Gerald Fedchuk

The Board of Trade of Metropolitan Toronto
A. Bruce McKelvey
M. Elyse Allan

Canadian Federation of Independent Business
Judith Andrew

Canadian Petroleum Products Institute
Gail M. Bolubash

Council of Ontario Construction Associations
Andy Manahan

Employers' Council of Ontario
Robert Stanbury

Ontario Home Builders' Association
W. Bryon Scott

Ontario Hospital Association
Barbara Andrews

Ontario Hotel & Motel Association
Rod Seiling

Ontario Mining Association
John E. Blogg

Retail Council of Canada
Peter Woolford

Employers:

The Review Team would in particular like to recognize the following employers who took time to share their views with it:

ADM Stainless Inc.
Tony Malizia

Brass Craft Canada Limited
St. Thomas, Canada

Buchanan Forest Products
Claude Perrier

Burger King Restaurants
Karen Schoening-Thiessen

CASCO Inc.
Cardinal, Ontario

CRCS General Contractors

Cap Products of Canada
Tom Costello

Centroy Assembly Ltd.
Wendy Payne

CHATS
Deborah Messervey

Chinook Group
Luciano Corbo

Clover Tool Manufacturing Ltd.
George Zeni

Cornwall City Police

Cris Douglas

Canada Post
Madeleine Meilleur

Canadian Bank Note Co. Ltd.
Eric Ryerson

Cuddy Foods Products
Elaine Thompkins

DOFASCO Inc.
Marianne Frkovic

Domus Industries Ltd.
Julie Palermo

Fabricated Plastics
Cathy Tadref

Geraldton District Hospital
Suzanne Marion

Hallmark Housekeeping Services Inc.
Al Walker

Hansa Industries Ltd.
Hans Riehl

Holland Canada
Dorothy Deadman

Hurst Bakery Inc.
Pauline Hurst

IMI Norgren
Lloyd Longfield

Imperial Oil
Rosa Florentino

Interior Home Improvement
John Provenzano

Iroquois Entreprises
Andrew Davies

J. F. Thomson Timber Inc.
Michael Raby

Jackson Builders Supply
Andrew Davies

Joy-Anne Jacoby
Workers' Compensation Specialist

Knoch Manufacturing Co. Ltd.

D'Arcy Dupuis

Corporation of the Town of Kenora
Sharen McDowall

Couvre Plancher Embrun Floor Covering Inc. (1997)
Sylvie Seguin

MSM Middlesex Supply & Maintenance Limited
Kai C. Wong

Manitoba Pool Elevators
Mike Kachur

McCallum Aluminum Limited
Brian Hollis

Menkes Development Inc.
Julie Wang

Ministry of Community and Social Services
Margaret Maxwell

Municipality of the Township of Tiny-Perkinsfield
Sue Cousineau

Nepean Hydro
S ophia Trottier

Norampac
Paul Robitaille

No-Sag Spring Company Ltd.
Jeff Brooks

P. F. Carpentry
Frank Coraci

Parr Inc.
Richard Quevillon

Partners in Research
Ron Calhoun

Red Cross Homemaker Service
Karen Bergman

Robin's Food Inc.
Larry Joy

Ruth Friedrich

SCO Health Services
Guy Raymond

Sarnia & Lambton Housing Authority

Steve Vincent

LOEB Inc.
Bob Booth

Savco Food Services Ltd.
Dan Stewart

Shane Nit
David Khan

Standard Tube Canada
Joe Shaw

Thames Valley District School Board
Karen Schram

The Denfram Group
Denise Peters-Former Advisory Council Member

The Office Place
Diane Ramnarine

The Town of Fort Frances
Glenn W. Treftlin

Lola Dudley

Sarnia Insulations Supply (1985) Ltd.
Roy McKeown

Thunder Bay Public Library
Beverly J. Brucha

Thunder Bay Regional Hospital
Linda Dier

Toronto Board of Education
Horach Knight

Trivar
Margaret Gibson

United Grain Growers
Mary Mazurkewich

Univex Management Limited
Gerry Matweow

Veg-Pak Produce
Debbie Sutherland

Organized Labour Participants

BRAC Lodge-650-Thunder Bay
H. Daniher

Brewers Retail
Kenneth W. Munro-Local 334W

Brewery Workers
Local 77

CAW Canadian Auto Workers-TCA Canada -
Representatives of Head Office & Locals
27, 40, 88, 103, 127, 199, 222, 444, 504, 524, 527,
540, 541, 558, 598, 707, 1075, 1285, 1520, 1524,
1941, 1959, 1995, 1996, 2168, 2213, 4268, 4401

CUPE-Canadian Union of Public Employees
Brian O'Keefe
Fred Loft
Mary Lou Tanner 167

Canadian Union of Postal Workers

International Brotherhood of Painters & Allied
Trades-Thunder Bay
Robert Kutcheran

I W A Canada-Local I-2995
Damien Roy

Labourers' International Union of North
America - Canadian Tri-Fund
Cosmo S. Mannella
P. Little-Local 527

London & District Labour Council
Rick Witherspoon

London Labour Council-Machinists-Lodge 756

Gil Warren

OPSEU-Ontario Public Service Employees
Union
Leah Casselman
Maria Doef 436

Office & Professional Employees International

Leon Bouvier

Christian Labour Association of Canada
Ray Pennings

Communications, Energy and Paperworkers Union of Canada
Catherine Fowler Local 12, Steve Cole 42, James Kilpatrick 91-0 Alan Noel, Denise Norman

Gloucester Professional Fire Fighters' Association
Glenn McNeil Local 1484

Graphic Communications International Union
Brian Fletcher-Local 100-M

Guelph Professional Fire Fighters Association
Werner Lautenbach

Hamilton and District Labour Council C.L.C.
Wayne Marston

Independent Paperworkers of Canada
Paul Robitialle-President-I.P.C. Local 77
John B. Connors-I.P.C. Local 343

International Association of Machinists and Aerospace Workers
Cam Sherk-Frontier Lodge-171

Sheet Metal Workers' International Association
John BB Nielsen-Local 30

St. Catharines & District Labour Council
Ed Gould

Stratford and District Labour Council
Bonnie Dunseith

Teamsters Local 91-Ottawa
Basil Humphrys

The Glass, Molders, Pottery, Plastic and Allied Workers
Mel Rice-Local 446

Thunder Bay and District Labour Council

Union
Gail L. Sneddon- Local 468

Ontario Federation of Labour
Wayne Samuelson

Ontario Nurses' Association
Barbara Wahl

Ontario Public Service Alliance of Canada
Claudine Salama

Ontario Sheet Metal Workers' & Roofers' Conference
George Ward
Jerry Raso

Peterborough & District Labour Council

Provincial Building & Construction Trades Council of Ontario
Alex Lolua

S.E.I.U.
Locals-Laura A. McWaters 183, Michael McLister 210, David Eales 220, Leslie Mancini & Jack Drewes 268, Ron Roscoe & Rob West 532, Michael Phillips 777

Ontario Professional Fire Fighters Association
Jim Lee, Local 626-Paul Atkinson

United Food & Commercial Workers
Brian Williamson-Local 1977
Brian Neathe

United Food and Commercial Workers International Union
Pearl L. Mackay-Blake

United Steelworkers of America
Henry Hynd and Representatives of Locals 6, 461, 677, 1043, 2918, 8327, 8694, 14193

United Transportation Union
Dennis J. Schweitzer

Waterloo Regional Labour Council
Bob Cruickshank

Welland & District Labour Council

Evelina Pan & Paul Pugh

Transportation-Communications Union (CLC) Grain Division
Herbert T. Daniher

Bob McCallion

Windsor & District Labour Council
Gary L. Parent-President

Injured Worker Participants

Disabled Workers' Complex Case Network
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The Review Team would like to express particular thanks to the many injured workers with whom it met, including:

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Don Hughes
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Frank Bernadri
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Mel Rice
Mike Lawson
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Individual Injured Workers-Ottawa

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Appendix C

Workers' Compensation Advisory Services:

A Cross-Canada Survey

Advisory Services in Canada: General Findings

The OWA and the OEA do not exist in isolation. The need for some form of workers' compensation advisory and representation service is recognized in most jurisdictions across Canada. In the course of surveying Canadian workers' compensation jurisdictions we noted a significant degree of commonality among the service providers in terms of mandate, operations and pressures and in terms of their relationship to the relevant workers' compensation authority. The degree of commonality is reflected in the value that the managers of worker adviser services derive from fairly regular inter-jurisdictional teleconferences. There appears to be a recognition that the practice in other jurisdictions can provide, among other things, bench marks against which to assess performance.

The following merely provides a high-level survey of our findings, based on telephone discussions with and written material provided by the managers of the services across Canada in response to a detailed questionnaire. The highlights of our findings can be summarized:

- All Canadian jurisdictions, with the notable exception of Quebec and Prince Edward Island, provide advisory and representation services to workers and their survivors, and many have provided the service for more than 20 years;
- The activity of all worker advisory offices is fundamentally the demand-driven provision of advisory and representation services, and the work load tends to be uniformly heavy;
- Three jurisdictions provide advisory and representation services to employers;
- There is a trend in most jurisdictions in the direction of seeking to resolve disputes over claims through a variety of mechanisms short of a hearing;
- In six jurisdictions, the service resides within a government ministry or department (usually Labour), employs civil servants, is funded by the ministry or department out of consolidated revenues, and the monies so allocated are recovered from the relevant workers' compensation authority;
- In four jurisdictions the authority to establish these offices is statutory, and non-statutory in five jurisdictions.

British Columbia presents the most comparable jurisdiction to Ontario for purposes of this review, in part because both workers and employers have access to an Adviser Office, and in part because of the roughly similar size of the jurisdiction (150,000 registered employers in B.C.). Both Offices were established in legislative changes in 1974, are staffed by civil servants and funded out of consolidated revenue by the Ministry of Labour, which recovers the costs from the Worker's Compensation Board.

The B.C. Employers' Advisers Office delivers services out of three offices with a staff of 20, which includes a Director and 12 advisers. The Office provides advisory, representation and education as well as on-site consulting services. In recent years, the Office has focused increasingly on the delivery of educational seminars and workshops and less on representation, on the ground that the provision of such programs leverages the impact of the Office in the workplace safety and compensation system. In their view, representation benefits a comparatively small number of individual employers. Correspondingly, the Office emphasises self-reliance and will assist employers in addressing their own claims and revenue issues. The Office has also increasingly focused its resources on smaller employers (88 per cent of its clients employ 50 or fewer staff), and encouraged larger employers to rely on their own resources. Finally, it is noteworthy that the Office has increasingly moved into the health and safety prevention area, again based on the view that this work leverages the impact of the small office on the system.

By contrast, the Workers' Advisers Office focuses almost exclusively on advice and representation in the workers' compensation area. This focus on direct service delivery is reflected in the staff mix: of the 40 staff, including the Director, 26 are advisers and two are assistant advisers. There are no other management staff. Each adviser carries a substantial case active case load (an average of 102 files per adviser).

New Brunswick and Newfoundland are the only other jurisdictions with services serving both employers and workers. The New Brunswick Offices are branches of the Department of Advanced Education and Labour, which funds them and recovers the monies from the Workplace Health, Safety and Compensation Commission. Both Offices are focused on providing advisory and representation services, although the Office of Employers' Advocates also engages in extensive "employer visitations." The three advocates in this Office, assisted by a part time administrative staff, manage their office, do their own intake, carry a very heavy case load and do an average of 50 appeals each year. The Employers Advocates give priority to small business. The Office of the Workers' Advocates is larger, with five advocates, assisted by a part-time support person, and carry an even heavier case load that includes an average of 66 appeals each year.

Newfoundland and Labrador presents a unique situation. The Department of Environment and Labour approved funding, which is provided by the WCB, for an Employers' Adviser position on the staff of the Newfoundland and Labrador Employers Council, and for a Workers' Adviser position on the staff of the Newfoundland and Labrador Federation of Labour. The Employer Adviser focuses on training and policy advocacy on behalf of the Council, and undertakes only those few appeals that have broad implications for employers in general.

Alberta, Saskatchewan and Manitoba provide worker advisory and representation services on different bases. Alberta is unique in that worker advisory services are provided by a branch of the WCB, the Office of the Appeals Advisor. Employing a staff of 20, including 13 advisers, the Office carries a significant active case load, opening and closing some 2,500 files annually. The manager of the Office noted that the relationship between the Office and the WCB has not impaired its ability to fully and effectively represent its clients.

The Saskatchewan Workers' Advocate was established in 1971 by administrative action (rather than in the statute) as a branch of the Department of Labour, which recovers its costs from the WCB. Its 8.5 staff, which includes the manager and six advisers, carry a significant case load (more than 100 active files per adviser), most of which is resolved through early intervention.

The Manitoba Employers' Adviser is similarly a branch of the Department of Labour and funded by recovery from the WCB. Established in legislation in 1982, this office is a successor to the first worker adviser appointed by the WCB in 1952. The 11 staff in this office, 8 of whom are advisers, are also focused on providing advice and representation services. Manitoba is unique in that the WCB has funded, since 1989, a Fair Practices Advocate, an independent officer of the Board whose mandate it is to investigate any concern brought forward by the public regarding an allegation of unfair treatment by the WCB.

Nova Scotia presents a unique situation from a number of perspectives. The Workers' Advisers Program established in 1996 legislation is the successor to a long-standing Workers' Counselor Program, through which worker appeals were assigned to private sector lawyers working on a fee for service basis. The office of the Chief Worker Adviser operates like a public sector legal clinic and employs 22 staff, including the Chief Worker Adviser and 12 advisers, 8 of whom are lawyers. The office is funded exclusively out of the consolidated revenue fund and the staff are civil servants; the Chief Worker

Adviser sits *ex officio* on the WCB board of directors. The focus is almost exclusively on advice and advocacy; the staff carry a very large case load and are expected to attend a substantial number of hearings. A peculiarity of the Nova Scotia legislation is that it permits the Board to appeal decisions of the Appeals Tribunal to the Court of Appeal. As a result, lawyer advisers do a not insignificant number of appellate hearings each year.

Finally, both Yukon and the Northwest Territories provide workers with access to a worker adviser. In the case of the former, the Yukon Workers' Compensation, Health and Safety Board funds a worker Advocate, reporting through the Department of Justice. In the latter case, the WCB funds the services of a worker advisor retained and managed by a consultant.

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Related Documents: Preventing Illness & Injury--A Better Health and Safety System for Ontario Workplaces
Workplace Safety and Insurance Act

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Last Modified: Tuesday September 14, 1999

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